

AUTHORIZATION OF AMTRAK

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 462

TO AMEND THE RAIL PASSENGER SERVICE ACT TO AUTHORIZE
APPROPRIATIONS FOR THE NATIONAL RAILROAD PASSENGER
CORPORATION, AND FOR OTHER PURPOSES

APRIL 6, 1989

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AUTHORIZATION OF AMTRAK

THURSDAY, APRIL 6, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice at 2:05 p.m. in room SR-253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Sheryl Webber Washington, professional staff member; Robert Holleyman, staff counsel; and Gerri Hall, minority professional staff member.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. The subcommittee will please come to order. This afternoon the Surface Transportation Subcommittee is holding a hearing on the reauthorization of the National Rail Passenger Corporation, commonly known as Amtrak.

This is our first subcommittee hearing during the 101st Congress and I am pleased to welcome our new members, Senators Robb, Burns, Gorton, and Lott.

As many of you know, I support the continuation of rail passenger service in this country. I believe it is a fundamental part of this Nation's transportation system and must remain so. It is also an important transportation system for my home State of Nebraska, stopping in Omaha, Lincoln, Hastings, Holdrege and Cooke.

On February 28, I introduced legislation to reauthorize Amtrak for fiscal years 1989 through 1992. I was especially pleased that the ranking member of this subcommittee, Senator Kasten, and 13 of my colleagues from around the country joined me as original cosponsors of this legislation.

The reauthorization level for fiscal year 1989 in this legislation is based on the fiscal year 1988 authorization included in the Omnibus Budget Reconciliation Act of 1985, with the subsequent funding levels in the bill adjusted for projected inflation.

I am pleased to learn that Secretary of Transportation Skinner, is willing to work with Congress and with Amtrak management to develop a long-range plan to address Amtrak's operating and capital requirements. This is a significant change from the past, and it is a good sign.

This is a welcome departure, at the very minimum, from the previous administration's lack of consideration of the progress Amtrak is making toward becoming more self-sufficient.

At this point, support for Amtrak's capital priorities is essential, in my view, if Amtrak is to improve its service and economic efficiencies in the coming years. Amtrak has been on a steady uphill climb since 1970, and I salute the leadership of Amtrak for that record and the employees of Amtrak that have helped in that significant improvement. The number of passenger miles traveled and revenue to expense have increased very dramatically.

During the course of today's session we will hear from Mark Lindsey, the chief counsel for the Federal Railroad Administration, and Graham Claytor, the president of Amtrak, on how Amtrak can continue to improve its system.

We will also hear from a panel of representatives of rail labor and of rail passengers. With these remarks, I will call upon any of my colleagues for any opening remarks that they may have.

Senator Burns, do you have any opening comments?

Senator BURNS. Yes, Mr. Chairman. I sure do.

Senator EXON. Will you please proceed at this time?

OPENING STATEMENT BY SENATOR BURNS

Senator BURNS. Thank you very much, Mr. Chairman. I am glad to be here this afternoon discussing the funding for Amtrak. Amtrak is a very important component of the overall transportation mix in my state and, of course, in the West.

Amtrak operates the long-distance Empire Builder, which goes from Chicago to Seattle through Montana. For many residents of my State, there is no other public transportation. There is no other alternative to Amtrak.

The distances in Montana are great and the population density tends to be relatively low, to say the least. Amtrak, in many instances, provides the only public transportation available to rural communities located along the northern edge of Montana.

Montana has been forced to struggle to meet its transportation needs in recent years. Railroad abandonment, and its subsequent impact on freight movement, has been met by local companies such as Montana Rail Link. Air service has been picked up by local airlines such as Big Sky. Bus service is being provided by companies such as Rimrock Stages. Amtrak is the national carrier that continues to link us to the major cities of Chicago and Seattle.

Now we do not ask for much. Montanans tend to be independent and self-sufficient. They have watched passenger rail service decline and disappear on the Milwaukee, the Great Northern and Northern Pacific Railroads. They do not want to see Amtrak passenger rail service disappear.

In fact, many Montanans would like to see the service on Amtrak expanded to include service along Montana's southern boundary. The problem now seems to be, for several years, the Federal budget and the deficit. I understand and I sympathize with the President's desire to get a difficult budget deficit under control. And I understand the desire for the former Secretary of Transportation to agree to support the elimination of federal funding for Amtrak.

But these people do not live in Montana. They are used to many transportation services. They are used to all those services being readily available to them on both coasts.

When transportation companies on the East and West Coast, in cities such as New York and Boston and Washington, D.C., get into financial trouble, they go out of business, and another company steps in and quickly fills that need.

However, this is not the case in the West, and especially in Montana. If air service or rail service or bus service is ended, it takes several years for another carrier to be induced to pick up the transportation services in those communities.

In the mean time, the communities suffer. Montana, indeed, much of the heartland of America is like this too. It is not yet sharing in the prosperity and economic growth that Americans that live on both coasts, are experiencing.

Montana, aside from its wonderful people, its natural resources and its scenic natural beauty, lacks many of the things that companies look for when they scout for locations to build new businesses. And good transportation infrastructure is one of those primary requirements.

Good roads, air service, rail service, are all services that a community must be able to offer in order to attract and keep existing businesses.

So, Mr. Chairman, I thank you for this opportunity. The reauthorization of Amtrak is not a drain on the federal treasury as characterized by the former Transportation Secretary. It is an investment that we can make in rural America. And it will pay handsome dividends.

Mr. Chairman, I would like to express my complete support for the reauthorization of federal funding for the National Railroad Passenger Corporation. Amtrak offers a vital alternative method of transportation for much of America. It is also of particular importance to Nevada, connecting rural areas like Elko, Caliente, and Winnemucca with our more populous cities. The California Zephyr and the Desert Wind provide an invaluable service to the citizens of Nevada.

As we all know, this is a time in which the Federal government must make some hard choices. In order to eliminate the federal deficit, we will need to cut government waste and inefficiency. However, I believe that in recent years, Amtrak has markedly increased its efficiency and progress.

Amtrak has been reducing its dependance on federal support and improving its quality of service. They have been able to cover 21% more of their costs in 1988 than in 1981. In addition, they need drastically fewer real federal dollars now to operate than they did in 1981.

By continuing to appropriate funds to the National Railroad Passenger Corporation, I hope that not only its efficiency, but its level of service to the country will continue to improve. However, if we cut funding off now, we will cripple an important part of our national transportation network.

That is my opening statement. Thank you very much.

Senator Exon. Thank you very much, Senator Burns.

I listened with great interest to your comments. I am sorry to hear that Montana is only connected to major cities such as Seattle and Chicago. If we could get Amtrak to do what I would want it to do, we could provide Montana with real major cities like Scotts Bluff, Nebraska and Omaha, Nebraska.

And all those stops in between, including North Platte, your wife's hometown.

Senator BURNS. How about Ainsworth and Gordon and all those.

Senator EXON. All those towns, north and south thereof.

Thank you. Let us call our first panel then. Mark Lindsey, chief counsel for the Federal Railroad Administration, and the Honorable Graham Claytor, president and chairman of the board of Amtrak.

I also have an opening statement from Senator Kasten that he would like to have included in the record.

[The statement and bill follow:]

OPENING STATEMENT BY SENATOR KASTEN

Mr. Chairman, I am pleased that we are holding this hearing today on the reauthorization of the National Railroad Passenger Corporation, or Amtrak. S. 462 would reauthorize federal funding for Amtrak through FY 1992. Though as Mr. Claytor notes in his statement the levels authorized in this bill will provide the Minimum capital requirements that Amtrak envisions through this period, it is an improvement over the capital blight that Amtrak has been faced with in recent years.

Under Mr. Claytor's leadership Amtrak has made significant progress in reducing the federal funding of Amtrak, if the gains are to continue service must not suffer and ridership must continue to increase. S. 462 should help assure this.

In addition to the funding outlined in the bill, there are several other proposals that Amtrak suggests which could save Amtrak money, and thus save federal dollars.

In its 1989 Legislative Report, and here today, Amtrak proposes the adoption of three of those proposals that could significantly reduce their costs.

With strong Administration support they ask for a special two year relief provision, that the commuter authorities already have been granted, to reduce Amtrak's payments under the Railroad Unemployment Insurance Act. Under this proposal their payments would reflect Their Own unemployment experience, and save \$16 million. I think this is a good proposal, OMB and DOT support, and I think we should enact it.

Last year, I discussed with Chairman Exon the FELA proposal and we held hearings on Amtrak's 3-year exemption proposal. Savings estimates are that this could save more than \$16 million per year, and provide an actual study as to the benefits, or problems, that would result from having all rail employees treated the same as all other employees in this country, including other transportation employees.

Most importantly on this subject, the FELA system is not serving the people it was designed to help anymore. 80 years after enactment, society and the system has changed. State compensation laws are now in place and this industry should be treated no differently than any other.

Further, the FELA system actually interferes with the proper efforts of labor and management, and the federal government, to provide a safe workplace. It interferes as well with the rehabilitation of injured parties and the compensation they receive. I would hope that we could this year provide for this 3-year study.

We should also consider the request for punitive damages relief which would reflect the policy of the Federal Tort Claims Act.

Mr. Chairman, thank you for holding this hearing, and I look forward to working with you on this bill and some of these proposals.

101ST CONGRESS
1ST SESSION

S. 462

To amend the Rail Passenger Service Act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (legislative day JANUARY 3), 1989

Mr. EXON (for himself, Mr. LAUTENBERG, Mr. SIMON, Mr. ADAMS, Mr. KERRY, Mr. DODD, Ms. MIKULSKI, Mr. KASTEN, Mr. ROCKEFELLER, Mr. JEFFORDS, Mr. CONRAD, Mr. BRADLEY, Mr. BIDEN, Mr. PELL, and Mr. SARBANES) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Rail Passenger Service Act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 601(b)(2) of the Rail Passenger Service Act (45
4 U.S.C. 601(b)(2)) is amended—

5 (1) by striking “and” at the end of subparagraph
6 (D);

7 (2) by striking the period at the end of subpara-
8 graph (E) and inserting in lieu thereof a semicolon; and

- 1 (3) by adding at the end thereof the following:
- 2 “(F) not to exceed \$630,000,000 for the Fiscal
- 3 year ending September 30, 1989;
- 4 “(G) not to exceed \$656,000,000 for the fiscal
- 5 year ending September 30, 1990;
- 6 “(H) not to exceed \$684,000,000 for the fiscal
- 7 year ending September 30, 1991; and
- 8 “(I) not to exceed \$712,000,000 for the fiscal
- 9 year ending September 30, 1992.”.

○

Senator EXON. Mr. Lindsey, since you are first on the list, we will be happy to recognize you first, and then we will follow with Graham Claytor, unless the two of you wish to do it in a different fashion.

Please, proceed, Mr. Lindsey.

STATEMENT OF S. MARK LINDSEY, CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JAMES T. MCQUEEN

Mr. LINDSEY. Thank you, Mr. Chairman. I am very pleased to be here this afternoon. With me to my right is James T. McQueen, who is our Associate Administrator for Passenger and Freight; and, as such, responsible for overseeing our work with Amtrak.

I would like to pick up where you began a while ago, Mr. Chairman, noting Secretary Skinner's stated willingness to work with the Congress and with Amtrak management to work out a long-range plan for Amtrak's operating and capital needs.

As you so kindly noted, that is a distinct departure from where the Administration has been coming from for the last several years. It is within that context that we would like to talk about everything else this afternoon.

Certainly, we have a fine foundation from which to build, given what Graham Claytor and his team have done with Amtrak in the 1980s. We have seen continual improvement in Amtrak's performance across the board. And it is safe to say that everything else that we have to say this afternoon is in the context of appreciating that performance.

From my perspective, in building a better America, the annual investments that the government makes in programs such as Amtrak ought to be taken in the context of a long-term investment strategy, and not just an annual amount that we can afford that buys something for that year.

We ought to be looking at shaping and sustaining a balanced transportation system. Secretary Skinner has also said that he wants to put together an integrated national transportation policy. It is considerations like these that will go into shaping and forming that policy.

In the rail system, there is very substantial unused capacity, unlike the other main competing modes. In air, on our highways, there is not very much unused capacity. But in the rail system, whether you are talking about shipping freight or carrying passengers, there is a great deal of unused capacity. That needs to be systematically addressed as well in thinking about an integrated transportation policy.

In our view, a long-range plan for Amtrak needs to take into account ways to increase revenues, ways to continue to control costs, and ought to aim as far as possible in bringing Amtrak toward and hopefully to economic self-sufficiency.

Critical to that is the approach that Graham Claytor and his team have taken of operating Amtrak as a business, and hopefully, we, the government, will view it the same way, as a business, not as a government agency. Those entities work very differently.

We think that Amtrak's progress reflects making that distinction very successfully. They have expanded revenues very substantially, more rapidly than inflation. Yield has been increasing steadily. Costs have been controlled effectively. We think further progress can be made on all of those fronts, and we are eager to help Amtrak accomplish that.

We think that a plan aimed in those directions has several key elements, which we would like to discuss with you this afternoon. One of those is some legislative help to eliminate unjustified extra costs that Amtrak now bears. In effect, these are indirect subsidies for other things that make Amtrak look unnecessarily bad. The true subsidy to Amtrak I think is lower than is shown on the books for this reason.

We think a plan should identify Amtrak's capital needs and sources of funds, both public and private, for meeting those needs.

And as you said in your opening statement, Mr. Chairman, we, too, are persuaded that the heart of a long-range plan for Amtrak must focus on capital. The history of Amtrak, so far, has shown that wise capital investment in the company brings down the level of subsidy, increases performance, draws passengers. Its consequences are uniformly good.

So the heart of a long-range plan for Amtrak must take into account what is done with this capital account.

And finally, we think it important that the plan, though perhaps not legislation implementing the plan, set corporate goals aiming towards self-sufficiency. Now, we are not recommending micromanagement of the company from the outside.

If I may focus for a moment on the legislative proposals, there are significant opportunities here to reduce costs without sacrificing safety or routes, at least routes that are performing well. We think that is quite important.

One single way of doing that is to provide Amtrak the exemption that it has requested from FELA.

Senator Kasten, last year, proposed a three-year experiment for Amtrak. We think that would be very, very effective.

FELA is an extremely costly program. Those costs can be reduced while providing other benefits and without, at all, harming the benefitted employees by shifting the coverage to state worker's compensation. We highly recommend that to you.

Further funds could be saved by treating Amtrak the same way that publicly-funded carriers providing commuter service are treated for railroad unemployment purposes. There are significant savings there.

The import of those savings is that Amtrak would reimburse the unemployment insurance fund only for the actual costs paid out in benefits to Amtrak employees for unemployment benefits and sickness benefits.

Presently, Amtrak is subsidizing the rest of the industry. Amtrak is certainly stuck with higher costs than its unemployment or sickness experience would justify.

We would urge that you permit Amtrak to charge the commuter authorities using the Northeast Corridor the full cost of using the Corridor.

Congress changed the law a few years ago to permit Amtrak to charge Conrail the full costs. We believe that appropriate, as well, with respect to the commuter authorities. Significant savings are available there.

And finally, we believe that the states and localities that seek section 403(b) and (d) services from Amtrak should pay the full costs of those services, both the capital and the operating costs that are associated with them.

All of those savings are quite significant.

We are concerned, Mr. Chairman, in looking at such a plan and contemplating S. 462, that S. 462 does not, on its face, appear to be based on such a plan, and does not show savings of this sort that would move Amtrak toward self-sufficiency.

We hope that as you consider the bill you will examine these proposals and consider including them, so that the bill does, indeed, reflect such a plan. In its present form, with authorizations that would increase above last year's level an increase annually, we would have to oppose S. 462. We would hope that change would make a different response possible.

I am not in a position today to discuss specific numbers that the Administration would recommend for reauthorization of Amtrak, because Amtrak is within the section of the budget termed "residual freeze" that is currently under negotiation between the Administration and the Budget Committees.

I would hope that those negotiations would come to fruition shortly. But, as they have not, my authorization to speak is limited.

With that, Mr. Chairman, I thank you and ask that you put my formal statement in the record. I will be pleased to answer any questions you may have.

[The statement and questions and answers follow:]

TESTIMONY OF S. MARK LINDSEY
CHIEF COUNSEL
FEDERAL RAILROAD ADMINISTRATION
BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION
APRIL 6, 1989

Mr. Chairman and members of the Subcommittee, I appear before you today to outline the Administration's position on reauthorization of financial assistance for the National Railroad Passenger Corporation (Amtrak).

Secretary of Transportation Skinner has stated his willingness to work with Congress and with Amtrak management to develop a realistic long-range plan to address Amtrak's operating and capital requirements. Amtrak falls within the residual freeze category, and items within this category are still being negotiated by the Administration and the Budget Committees. The Department opposes S.462 because, given the rising authorizations levels in it, it does not appear to be based on such a plan and it does nothing to bring Amtrak closer to self-sufficiency.

In building a better America, we should do our utmost to assure that our annual investments in programs such as rail passenger service are made in the context of a long-term investment strategy shaping and sustaining a balanced

transportation system for the future. We strongly believe that any long-range plan to address Amtrak's operating and capital needs should build on recent success in exploiting this capacity to increase revenues and control costs to move the company closer to self-sufficiency.

First, any such plan must be premised on the idea that Amtrak must operate as a business, not a government agency. Amtrak's improved financial performance is largely due to the fact that it is being run as a business with management focusing on expanding revenues, controlling costs and improving its bottom line. Any departure from this course will undo the dramatic progress the company has made. A plan should also (1) include legislation to modify certain Federal laws to eliminate significant extra costs imposed on Amtrak without sound justification; (2) identify essential capital needs and funds, both public and private, for addressing those needs; and (3) set broad corporate goals which move the company closer to self-sufficiency.

Legislative Proposals

We strongly believe that there are opportunities for reducing operating expenses without sacrificing safety or eliminating performing routes. I will briefly outline those requiring new legislation:

- Exempt Amtrak from coverage under the existing fault-based Federal Employers Liability Act (FELA) and substitute coverage under state worker's compensation programs. Where FELA is a lottery in which some employees strike it rich while others receive nothing for similar injuries, state worker's compensation assures every person injured in the workplace of equitable compensation regardless of fault. Where FELA puts Amtrak at a competitive disadvantage because of its significantly higher costs, state worker's compensation puts Amtrak on an equal footing with its air and bus competitors. Where FELA provides compensation to injured employees only after fault is established and damages assessed in a judgment or settlement, state worker's compensation normally requires the payment of initial benefits within a reasonably short time, often thirty days. Where FELA provides strong disincentives to early rehabilitation of the injured employee and to speedy return to productive employment, state worker's compensation provides strong incentives to employer and employee alike for prompt rehabilitation and speedy return to work. Where FELA has unjustifiably high administrative costs, some of which, such as attorneys' fees, directly diminish the injured employee's compensation, state worker's compensation minimizes administrative costs to employer and employee alike.

- Give Amtrak the same special treatment accorded "publicly funded rail carriers" providing commuter service under the Railroad Unemployment Insurance Act (RUIA). Such treatment would permit Amtrak to repay the RUIA fund only the amount of employment and sickness benefits paid to Amtrak employees. Amtrak now pays a tax based on sickness and unemployment experience throughout the railroad industry which is considerably more than it would be if it were based on Amtrak's own sickness and unemployment record. Congress has addressed this for the long term by providing for RUIA to be converted into an experience-rated program over a four-year transition period. In the short term, however, Amtrak is stuck with higher costs than its experience justifies while commuter authorities are being required to pay only the actual costs of benefits paid to their employees during the transition period.

- Authorize Amtrak to charge commuter authorities the full operating and maintenance costs for use of the Northeast Corridor (NEC). Currently, commuter authorities pay only a portion of the operating and maintenance costs attributable to use of the NEC by their trains. In FY 1985, Congress amended the law to eliminate a similar cross-subsidy for Conrail, while

the cross-subsidization of commuter trains by Amtrak continues.

- Require states to pay 100 percent of losses on 403(b) intrastate and 403(d) commuter trains operated by Amtrak at the request of a state and solely for the benefit of its residents.

In closing, I reiterate the Department's opposition to S.462 on the basis that it does nothing to bring Amtrak closer to self-sufficiency. We strongly urge this Committee to give serious consideration to cost-cutting measures such as exempting Amtrak from FELA; treating Amtrak like commuter authorities under RUIA; and authorizing Amtrak to charge full costs for 403(b) and (d) services and NEC commuter operations.

I will be happy to answer any questions the Committee may have.

(HOLLINGS #1)

QUESTION #1: In your testimony, you indicate that Secretary Skinner is willing to work with Congress and Amtrak to develop a long-range plan to address Amtrak's operating and capital requirements. You also suggest that such a plan should identify essential capital needs and both public and private funds for addressing those needs. Would you please elaborate on this proposal?

ANSWER:

We do not yet have a detailed plan. The Secretary has testified that the Department may be willing to support an appropriation up to the level of the FY 1989 appropriation. Within that range, we are developing operating and capital plans that would accelerate the movement toward self-sufficiency. Vital to those plans are statutory changes (many of which are supported by Amtrak) to reduce operating losses suffered by the company for no good reason. Preliminary work on the operating and capital plans indicates that, without legislative changes to reduce these unjustified operating losses, it will be extremely difficult, if not impossible, to provide the public capital funds and attract private investments which will be essential in moving the company to self-sufficiency. Annual operating savings from the proposed legislative changes could finance a substantial portion of Amtrak's priority capital needs, including the replacement of the aging Heritage cars and the modernization of the Northeast Corridor electric power supply.

QUESTION #2: Some of our other witnesses testified in support of a dedicated funding source for Amtrak. Is this something that is being examined as DOT develops its "National Transportation Policy?"

ANSWER:

A number of funding options will be examined as the National Transportation Policy is developed, and I would not want to prejudge the outcome of that process. I would emphasize, however, that the Department's goal is to move Amtrak to self-sufficiency so that there is no need for Federal subsidy. That strategy is working well as to operating costs, as evidenced by the steady increase in percentage of such costs covered by revenues, 69 percent in FY 1988 compared with 48 percent in 1981.

QUESTION #3: On the one hand, your testimony suggests that my plan for Amtrak must be premised on Amtrak operating as a business, not a government agency. However, you also recommend that Amtrak be given the same special treatment accorded "publicly funded rail carriers" under the Railroad Unemployment Insurance Act (RUIA). Do you find these two positions to be inconsistent, and are there other instances where it is sometimes better for Amtrak to be treated as a government entity?

ANSWER:

We do not believe that it is inconsistent to advocate operating Amtrak as a business, with a focus on revenues and expenses, and at the same time advocate that the Federal Railroad Unemployment Program base assessments to Amtrak and "publicly funded rail carriers" on expenses attributable to them. The Reagan Administration budget proposed that RUIA would operate more like a business in that it would become "experience rated" as to Amtrak as well as the commuter authorities and would require these passenger carriers to pay only the unemployment costs they impose on the system. The proposal would end the current system where Amtrak, with stable employment, pays the same assessment per employee as, and thus subsidizes, privately owned freight railroads which have more seasonal employment and, thus, much higher short-term unemployment.

(BURNS #1)

QUESTION #1: You have suggested that a long-range plan for Amtrak should include corporate goals for approaching self-sufficiency, but you did not spell any out. Can you give us examples of the kind of goals you have in mind?

ANSWER:

It is difficult to argue with Amtrak's dramatic success in improving its financial performance during the 1980's. However, we believe that Amtrak can improve on that performance if it avails itself of entrepreneurial opportunities in its markets and is vigilant in controlling operating costs. Of primary concern is progress toward self-sufficiency, and a multi-year plan should set goals for that improvement. Goals on cost containment will incorporate proposed legislative changes for the elimination of costs imposed on Amtrak without justification.

(BURNS #2)

QUESTION #1: Since you proposed that we address Amtrak's needs in terms of a long-range plan, how should the unused capacity you refer to in the rail system be taken into account.

ANSWER:

The national railroad system can increase system-wide passenger carrying capacity by adding cars to existing trains and by replacing existing cars with equipment that accommodates more passengers per car. A long-range plan should consider the need for new equipment to enable Amtrak to exploit marketable, unused capacity throughout the system. Amtrak has recently begun exploiting that unused capacity by adding cars (104 by end of 1989) acquired with private financing. Still, much more can be done. A comparison with the Japanese railroad system is instructive: Amtrak serves a market that is potentially larger, yet does so with far fewer cars.

(BURNS #3)

QUESTION #1: You are placing much more emphasis on capital funding than we heard from the Reagan Administration. Why? What are the most important Amtrak capital programs to fund and why?

ANSWER:

Our emphasis is on moving Amtrak toward self-sufficiency. If Amtrak is to continue to move toward self-sufficiency, its tracks and other infrastructure must be kept in good condition and it must have an ample supply of cars in top condition to serve all the passengers it can attract at optimal prices. We would emphasize again, however, that without legislative changes to eliminate certain unjustified costs, it will be extremely difficult, if not impossible, for Amtrak to redirect its financial resources to its priority capital needs. Without such changes, operating subsidy requirements will continue to use millions of dollars that would otherwise be available for the capital projects which are vital if the company is to continue toward self-sufficiency.

The most important capital investments now appear to be replacing the aging Heritage Fleet with new Viewliner equipment on long-haul routes through rural America east of the Mississippi and installing centralized electrification and traffic control throughout the Northeast Corridor. The latter investment would increase both the safety and the capacity of the Northeast Corridor.

Senator EXON. Thank you very much, Mr. Lindsey. And without objection, your full formal statement will be included in the record, which is now ordered.

And I am pleased now to recognize Mr. Claytor. Welcome back before the committee once again, Mr. Claytor.

Please, proceed.

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT AND CHAIRMAN OF THE BOARD, NATIONAL RAILROAD PASSENGER CORPORATION

Mr. CLAYTOR. Thank you, Mr. Chairman.

It is a great pleasure to be before this committee again. With me on my left is Tim Gillespie, our assistant vice president for Public and Government Affairs; and behind me, our executive vice president, William S. Norman.

This is the first time that I have been before any Congressional committee in my capacity as president of Amtrak, and been able to say that I am pleased to endorse almost everything that has been said about Amtrak by the Department of Transportation.

I have a few comments about S. 462 that I think would fit into that, but I do want to say that such suggestions, as getting full compensation from the commuter agencies and making the 403(b) trains pay their entire way, are objectives that we have had ever since I have been here.

How to do that is perhaps the only thing on which we might disagree. I am not sure these changes are feasible to do by legislative fiat; we are trying to do it by improving our contract every year with the commuter agencies. And perhaps that could be boosted a little bit with legislative help.

And I think to get the 403(b) trains to pay their entire way needs to be done on a gradual basis. Any effort to do so overnight, I think would kill all the trains.

But, I am in full support of the objective.

So I am very pleased to be able to say that.

Now, Mr. Chairman, I want to mention that today, Amtrak is a victim of its own success in that this year we had over 200,000 standees on our Northeast Corridor unreserved trains, and 50,000 more on the Empire Service in the Midwest and the San Diego trains.

Our sleeping accommodations are currently sold out weeks and months ahead, even though this is not normally a peak period. Even our coach reservations on many routes are sold out. Now sold out trains mean lost revenue which, if received, would further reduce our subsidy and move us toward self-sufficiency.

We have a great need to replace our obsolete 40-year old sleepers with our newly designed Viewliners. Now this is more than just making a customer happy because he would have more comfortable cars, which the Viewliners would be. The most important result, Mr. Chairman, is that there would be a 50 percent capacity increase in sleeping berths by substituting a Viewliner car for an existing sleeper.

The existing sleepers each have a total of 22 beds. The new Viewliner sleepers each have 34 beds, a 50 percent increase. We increase

our capacity and our revenue by 50 percent, and the actual cost of operation will be less, because these cars are newer and cheaper to maintain.

So this is a high priority with us. We have designed these cars and we have tested them. We are ready to order them in the year 1990. To do that requires capital. In that connection, we have asked for and fully support the S. 462 authorization of \$656 million.

That would provide us with all the money we need for our steadily declining operating costs, and we would be able to take about \$50 million of that for these new sleepers. It will take \$100 million for an order of the new sleepers, but we have now developed enough credit standing in the financial community, so we can match the \$50 million in federal appropriations with \$50 million that we will borrow for these new sleepers, and get \$100 million for the first order, which will be about 50 new cars.

I do not think it would be wise to place a smaller order than for 50 new cars, because the costs for tooling would be so great as to be uneconomical.

Nevertheless, your authorization, and we have asked for the same figure on appropriation, would give us, for the first time in the last 7 or 8 years, a capital fund that would enable us to keep going.

Now, Mr. Chairman, all of this would move Amtrak closer to self-sufficiency, which is just what the DOT and we both want to do. My feeling is that S. 462 should not be opposed until we have a long-term plan; we have a plan right now, the plan is to move in the direction of self-sufficiency just as fast as we can.

And we have succeeded in doing that by taking our revenue-to-cost ratio from 48 percent 8 years ago, to 70 percent right now. And it is going to be 71 percent or better at the end of this year. I am shooting for 75 percent soon.

But the way you do that is not postpone capital funding until we get a grand plan written on paper, but to get capital money that we can spend now. That is what S. 462 does. And I think S. 462 does exactly what the DOT has suggested that we should be doing.

The return on investment will enable us to continue to reduce our need for federal operating support, to move closer to self-sufficiency. And so I strongly support the authorization bill that you and our other friends in the Senate have sponsored.

Now let me turn to our legislation. Other ways to improve our financial position by legislation that Mr. Lindsey has mentioned are clearly also important. He has described adequately the non-controversial amendment to the Railroad Unemployment Act, which for the next two years would save Amtrak \$16 million.

There is no opposition to that by anyone that I know. And actually for the first time that I can remember, it has been formally supported by the OMB. So I would hope that this committee could put that one into effect quickly.

We have also proposed that awards of punitive damages be prohibited on personal injury cases against Amtrak and in passenger train cases against commuter railroads and the freight railroads over whose tracks the passenger trains operate.

Now, this provision, Mr. Chairman, is already in the Federal Tort Claims Act for suits against the United States. Personal

injury suits against Amtrak are paid by the United States, since they are on the margin, and they will fall right into what the taxpayers pay. So, the same provision certainly ought to apply to Amtrak.

There is some legislative precedent for this. The Alaska Railroad was exempt from punitive damages awards when was operated by the United States. Prohibitions against such awards are currently in state laws for most of the commuter agencies, and it ought to be there for Amtrak.

Now, we have also suggested that it be included for Amtrak, for publicly funded commuter railroads, and for those freight railroads over which the commuters and Amtrak trains run, but only in cases involving passenger trains. That is important because the freight railroads in recent years have become more and more reluctant to allow passenger trains and commuter trains to operate over their tracks because of the danger of punitive damages, which are going through the roof in many cases.

This is one of the main problems that has been presented by the northern Virginia commuter proposal. We are all ready to run those commuter trains for northern Virginia, but Conrail has not been willing to permit them to operate over the one mile of track that the service would have to run over Conrail because of this kind of problem.

Our proposal would take care of that, and I think it would take care of it in the right sort of way.

The third thing that I want to mention is the Federal Employers' Liability Act. This committee held hearings on this last year, and I will not now repeat our arguments for this important three-year trial. The important thing is that we are not asking for the repeal of the FELA. We are asking for a three-year trial at the end of which period Amtrak would revert back to the existing law unless Congress by affirmative legislation extends it.

We want to take that—we are willing to take that chance because we believe that the results will prove that workers' compensation is better. But let us find out. Let us not argue whether it would be good or bad in theory. Let us try it out and see.

It plainly would save Amtrak \$15-\$20 million a year, and that comes right out from the federal taxpayer, of course.

Now, in this connection I want to very much appreciate the Railway Labor Executive Association support through my good friends Jim Kennedy and Bill Mahoney for the authorization and appropriation request. I am only sorry that we cannot agree on our FELA proposal.

I really do not feel that Amtrak's labor relations are deteriorating or that Amtrak is in any sense attacking its employees or their unions. I believe our legislative proposals would have been good for both Amtrak and its employees—on this Mr. Kennedy and I have an honest difference of opinion.

Our real opponent here, of course, is not labor but the trial lawyers who have a real racket going in this situation and certainly do not want to give it up.

In this connection I note that Mr. Kennedy's prepared statement is directed almost entirely to opposing repeal of FELA, and I want to make clear again that all we are asking for in this legislation is

a three-year trial which will be temporary unless Congress finds that as a result of that we need to repeal it.

So, we are not asking for repeal. We are asking to try this out in fact and let us get the facts proved. And we are asking the GAO to evaluate this and report to Congress on it.

Now, one other thing I would like to make clear. Mr. Kennedy notes in his testimony that we did not list the injury claims made by employees in two accidents referred to in my prepared testimony. I should have included that. I have here a list of those injuries, and I would like to ask that it be included in the record, Mr. Chairman, if it is satisfactory.

Senator EXON. Without objection, that will be included with your statement.

Mr. CLAYTOR. In addition, I would like to state that we have just had another example of a potential abuse of the FELA involving a minor derailment of our Sunset Limited at the entrance to Los Angeles station yesterday morning at a speed of six miles an hour. A switch, a defective switch derailed the trucks of two adjacent cars in the middle of that train; the switch, of course, was not Amtrak's. It belonged to Union Pacific, I might add, but the derailment really amounted to nothing.

There were no passenger injuries, but the five onboard service employees in the two cars all claimed injury and are now off work, just as the 16 onboard service employees in a similar minor derailment of the Rio Grande did the same thing. We have not had any FELA claims filed yet on yesterday's derailment because it is too soon, but we expect them. That is the kind of problem that we have with the FELA.

Now, Mr. Chairman, two minor things I want to mention and then I am through. In my prepared testimony I also suggest, and this is part of a long-range plan, that for the long pull Amtrak ought to be funded through a unified transportation trust fund supported by the gasoline tax. Given the renewed focus on environment and energy concerns, this ought to be a priority in any national transportation policy. We do not ask for that this year, but we think that in the long-range plan that is the right way to go.

Finally, in conclusion, I want to point out something that we have not talked about much before. Amtrak's future is inextricably tied to the health of the freight railroad industry. Although Amtrak owns and operates the Northeast corridor, all of our other trains in the country, including those in Montana, travel over tracks owned and maintained by the freight railroads. Their ability to remain competitive vis-a-vis the trucking industry is critical to the existence of well maintained and safe track over which to operate passenger trains.

With growing concern over air pollution, energy conservation, global warming, and the condition of the nation's highways, I believe the Congress must ensure that the rail alternative, both passenger and freight, remains viable and healthy. Proposed legislation that is already in the wings to again increase the length and weight of trucks, together with the use of multiple trailers, would undermine the ability of the freight railroad industry to remain in business. It would make our highways even more dangerous for the private automobile, and would force the abandonment of important

rail lines. This can only hurt or even destroy much intercity rail passenger as well as freight service, and I urge the committee to consider the serious ramifications for the future of the entire railroad industry—passenger as well as freight—from proposals such as that. They are not pending yet, but we know they are coming, and I am ready to fight them.

This completes my testimony, Mr. Chairman. I will be glad to answer any questions.

[The statement and questions and answers follow:]

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT AND CHAIRMAN OF THE BOARD,
NATIONAL RAILROAD PASSENGER CORPORATION

My name is W. Graham Claytor, Jr. I am President and Chairman of the Board of the National Railroad Passenger Corporation (Amtrak). I am very pleased to appear before this distinguished Committee today to comment on S. 462, which would reauthorize federal support for Amtrak through FY 1992, and to discuss several important proposals Amtrak has put forward to reduce our need for federal operating support.

My goal during the past eight years has been to maintain and improve our existing national rail passenger system while taking all steps possible to lessen Amtrak's dependence on the federal government for financial assistance. We have been very successful in this regard. Federal financial support for Amtrak has declined 35 percent since 1981 -- 51 percent in constant dollars. Importantly, the amount of federal support needed to support our operations dropped from \$676 million in 1981 to \$532 million last year. Amtrak earned a record \$1.1 billion in revenues last year, and the prospects for FY 1989 are even better. These revenues enabled Amtrak to dramatically improve its bottom line -- the revenue-to-cost ratio. In 1981, we covered just 48 percent of our costs without federal assistance. Last year, we covered 69 percent of our costs, and this year we will hit 70 percent or better. We have made significant strides in making Amtrak more efficient; our labor agreements are the most modern in the railroad industry; and through aggressive

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marketing, we are maximizing the revenue potential of our limited fleet of cars.

Unfortunately, we are becoming the victims of our own success. As a front-page article in the New York Times recently made clear, the strong demand for Amtrak service is outstripping our capacity to provide it. Under these circumstances, significant further reductions in our need for federal operating support can only come from two areas: first, additional capital for rolling stock to permit us to handle the growing demand for Amtrak service and for modernized maintenance facilities; and second, enactment of legislation that would permit Amtrak to avoid significant unnecessary costs.

I.

This Committee is well aware of Amtrak's need for capital, particularly for new cars and locomotives. Federal capital support has dropped 87 percent in the last eight years -- from \$221 million in FY 1981 to just \$28 million this year. Last year, while considering S. 2320, a bill to reauthorize federal funding for Amtrak, the Committee examined the history of federal financial support for Amtrak and concluded that increased support for Amtrak's capital priorities was essential. In its report on S. 2320, the Committee stated:

[We] recognize and note that improved facilities and equipment are necessary to enable Amtrak to grow and to provide better, more reliable service at less cost. Neglecting to invest in such improvements will prevent Amtrak from replacing critical capital assets

once they are consumed. This is likely to result in Amtrak's reduced reliability, increased vehicle maintenance, deteriorating quality of service, and an increase in the cost of providing service. In fact, Amtrak's recent on-time performance decrease is in part due to its lack of sufficient rolling stock and the consequent overuse and under-maintenance of existing rolling stock to handle a growing passenger demand.

Amtrak is a capital starved corporation. Without new rolling stock and funds to modernize our most obsolete maintenance facilities, we will be unable to make more progress in reducing our dependence on federal operating support. The quality of our service will also be compromised.

The enactment of S. 462 would be a major step in this direction. I want to express my appreciation to Senator Exon and Senator Kasten, as well as the other sponsors of this bill, for introducing legislation to reauthorize federal funding for Amtrak at levels that recognize our critical need for capital investment. S. 462 would reauthorize federal support in the amount of \$630 million, \$656 million, \$684 million, and \$712 million for the years FY 1989 through FY 1992. Appropriations to Amtrak at these levels would provide us with the minimum capital we will need during the next several years to make a start on acquiring new rolling stock and improving some of our most obsolete maintenance facilities. I strongly support the proposal and urge the Committee to approve these funding levels. In fact, an appropriation for FY 1990 of \$656 million would provide \$50 million for new passenger cars, which we would match with financing of an equal amount in the private sector. This

would enable us to place an order for 50 desperately needed Viewliner sleeping cars.

While appropriations at the proposed levels would allow us to improve our service and efficiency in the coming years, I strongly believe that for the long pull the best way to address Amtrak's critical capital needs is to provide funding for Amtrak through a unified transportation trust fund, supported by the gasoline tax. This would better ensure a coordinated, energy sensitive national transportation policy for all modes. Given the many proposals to increase the gasoline tax for deficit reduction purposes, Amtrak strongly supports using a portion of any new taxes to fund mass transit programs and Amtrak. Importantly, although some highway advocates object to use of the gasoline tax for non-highway purposes, increased use of Amtrak and mass transit will ease the pressure to build new roads and the ground transportation networks necessary to support new airports. Moreover, the cost of rail facilities is dwarfed by the enormous expense of new highway construction.

A penny a gallon from gasoline tax revenues, used to fund Amtrak, would have numerous other advantages and is supported by a number of transportation and environmental organizations. While Amtrak still would be required to justify its operating and capital budgets to this Committee and to the Congress, a dedicated funding source would ensure availability of the resources needed by Amtrak to operate its system and to purchase

equipment. This would enable Amtrak to engage in meaningful long-term planning, not now feasible. It would also de-politicize the funding of rail passenger service and eliminate yearly attempts to end federal support for Amtrak. In addition, a dedicated funding source for Amtrak would give non-federal financial institutions more confidence in the long-term future of Amtrak and encourage them to finance capital and rolling stock programs.

Although this Committee does not have direct jurisdiction over use of gasoline tax revenues for Amtrak, your support on this issue is critical and I look forward to discussing this issue with the Committee in more detail in the future.

On a related matter, Amtrak's future is inextricably tied to the health of the freight railroad industry. Although Amtrak owns and operates the Northeast Corridor, our other trains throughout the country travel over tracks owned and operated by the freight railroads. Their ability to remain competitive vis-a-vis the trucking industry is critical to the existence of well maintained and safe tracks over which to operate passenger service. With growing concern over air pollution, energy conservation, and the condition of the nation's highways, I believe that Congress must ensure that the rail alternative -- both passenger and freight -- remains viable and healthy. Proposed legislation to increase the length and weight of trucks, together with use of multiple trailers, would undermine

the ability of the freight railroad industry to remain in business, make our highways too dangerous for the private automobile, and force the abandonment of important rail lines. This can only hurt intercity rail passenger service and I urge you to consider the serious ramifications to the future of the rail industry from such proposals.

II.

In February of this year, Amtrak submitted to Congress its 1989 Legislative Report. Because the proposals included in this Report would significantly reduce our costs and hence our need for federal operating support, I ask that it be included in the record. I will accordingly not repeat here the detailed analyses included in that Report, but I do wish to discuss three of the most important of these proposals.

The first, which is strongly supported by the Administration, would extend to Amtrak a special two-year relief provision accorded publicly funded commuter authorities last year under the Railroad Unemployment Insurance Act. This proposal would save Amtrak \$16 million over the next two years. The second proposal would make Amtrak, commuter authorities, and the railroads over which Amtrak and commuter authorities operate exempt from the award of punitive damages arising out of passenger train accidents. The third proposal would be a three-year test, under which the injury claims of Amtrak employees would be resolved under the no-fault workers'

compensation laws rather than under the Federal Employers' Liability Act (FELA). This proposal would significantly reduce Amtrak's costs and improve safety on the railroad.

1. Treatment As A Publicly Funded Rail Carrier
Under The Railroad Unemployment Insurance Act.

Last year, Congress amended the Railroad Unemployment Insurance Act (RUIA), which provides for unemployment and short-term sickness benefits for railroad workers. Presently, all railroads -- including Amtrak and commuter railroads -- pay the same "premiums" based on the average unemployment record for the whole railroad industry, not on the record of the individual railroad. Although employment has been stable or growing at Amtrak and the commuter railroads, employment in the rail freight industry has dropped precipitously over the past two decades. As a result, significant unemployment benefits must be paid out to unemployed freight employees and the premiums paid by the railroads are quite high. Because there is only a single rate charged all railroads, Amtrak and the commuter railroads have for many years been paying far more into the Railroad Unemployment trust fund than has been paid to their employees in benefits.

Recognizing the inequity of charging all railroads the same amount regardless of a railroad's unemployment experience, Congress passed legislation at the close of the 100th Congress that converts the RUIA system over the next three years to an

experience-rated program, under which premiums will be based more generally on each individual railroad's employment record.

In the case of publicly funded commuter railroads, however, Congress elected to relieve them immediately of the surpluses that they otherwise would continue to pay into the trust fund until the experience-rated system is fully phased-in. Under the provision, commuter railroads are required for 1989 and 1990 to repay to the Railroad Unemployment trust account only the actual amount of unemployment and sickness benefits paid to their employees, rather than the standard "per employee" tax. This will result in a significant savings for the commuter railroads.

If Amtrak were treated in this same manner, it would save approximately \$16 million during the two-year period. This savings would directly reduce Amtrak's need for public funding. The Reagan Administration supported extending this provision to Amtrak, and we understand that both OMB and the Department of Transportation also support it.

2. Punitive Damages.

Amtrak has recommended enactment of several measures that would place reasonable limits on Amtrak's tort liability. Together, these proposals could save Amtrak an estimated \$10 million per year. The most important of the provisions is a prohibition on the award of punitive damages by a court or jury against Amtrak or publicly funded commuter rail authorities.

The potential availability of such non-compensatory awards can greatly inflate both jury verdicts and the cost of settling injury cases over and above any actual damages suffered, and thereby can directly increase both Amtrak's and commuter railroads' requirements for governmental support. Such damages are not intended to compensate the injured plaintiff, but rather to punish.

In Amtrak's case, of course, the federal government must ultimately pay for that punishment. This is inappropriate, costly, and unproductive. For sound public policy and fiscal reasons, recovery of punitive damages against the United States is prohibited under the Federal Tort Claims Act and in some states is prohibited against publicly funded commuter authorities. So long as Amtrak and commuter railroads receive substantial government support, actual compensation alone of the injured plaintiff is appropriate, but punitive damages, charged in effect against the government, cannot be justified.

In addition, the risk of liability for inflated passenger personal injury awards against freight railroads over whose tracks Amtrak and commuter trains operate has made some railroads hesitant to enter into agreements to permit new or additional passenger service over their lines, and has caused other railroads to threaten to impose slower freight train speeds on Amtrak or institute suit for other relief. Although insurance generally is available to commuter authorities to

indemnify the railroads for most of the liability that can result from the operation of passenger service, it is the availability of punitive damages that can cause awards and settlements to escalate so dramatically. Prohibiting the award of punitive damages thus is essential to enable Amtrak and the commuter authorities to obtain or maintain reasonable agreements from the freight railroads for passenger service. This issue may well be the key to reaching agreement for the inauguration of commuter service in Northern Virginia and in other urban areas trying to reduce highway congestion and air pollution.

3. Exemption From The Federal Employers'
Liability Act.

My greatest single priority at Amtrak has been to enhance the safety of our employees and our passengers. We have made excellent progress in this area, and Amtrak will receive the "Most Improved" Harriman Safety Award this year for the improvement we have made in reducing employee injuries.

I am proud of the progress we have made in this area and we will continue to focus on new ways to improve safety. However, I believe that the greatest impediment to enhanced work place safety is the continued use of the fault-based Federal Employers' Liability Act (FELA) to resolve claims for employee injury compensation. For nearly every other industry in the United States, employees are compensated for injuries under individual state no-fault workers' compensation programs. These programs ensure that injured employees receive reasonable

benefits regardless of fault for the duration of their disability.

In great contrast, under the FELA, a statute enacted prior to the development of no-fault workers' compensation programs, an employee must sue his employer in court to recover any benefits, unless the parties can reach a settlement. The key to recovery by the employee is to establish that the injury was caused by the negligence of the railroad. Incredibly, if the employee was at fault, he or she may recover nothing for the injury. This requirement to determine fault -- which is entirely absent under no-fault workers' compensation programs -- creates an extremely adversarial relationship between the employee and the railroad-employer as each must try to prove to a jury that the other was responsible for the injury. It also dramatically increases the legal fees associated with the claim, both on the part of Amtrak and the employee. Generally, the employee loses between 25 and 40 percent of any FELA court award for attorney and litigation costs. In turn, Amtrak must pay substantial litigation expenses defending FELA cases. Amtrak's total cost for resolving FELA claims, including payouts to plaintiffs and their attorneys, administrative costs, and legal defense costs, exceeded \$52 million during 1988.

In addition, because FELA attorneys want to present the most sympathetic and dramatic case to the jury, employees are strongly discouraged from returning to work or seeking

rehabilitation. For example, of the 11 crew-member employees who filed FELA injury claims related to Amtrak's January 1987 Chase, Maryland accident, only one has returned to work. Similarly, although there were no passenger injuries reported immediately following a December 25, 1988, minor Amtrak derailment near Glenwood Springs, Colorado, all 16 of the on-board service employees filed FELA claims and four of them have not yet returned to work.

In our Legislative Report, we have proposed that the injury claims of Amtrak's employees be resolved under state workers' compensation programs for a three-year test period, during which the data necessary to make an informed decision on the future of the FELA can be developed. Amtrak could save substantial funds under state workers' compensation programs, and we believe that employees would be afforded a more equitable remedy for their injuries. Moreover, I believe that work place safety would be significantly enhanced under a no-fault compensation system. The FELA undermines efforts to create a work environment conducive to reducing employee injuries. Work place safety requires a commitment at all levels of the corporation -- from the brakeman to the boardroom -- to work together to identify potential problems, to learn from previous experience, and to devise new procedures to eliminate unsafe conditions and practices. A compensation system that requires management and labor to point fingers at each other, perhaps even to obscure

the real cause of accidents, undermines such a cooperative spirit and inhibits our safety program.

As the Committee is aware, Amtrak first recommended the three-year test proposal in its 1988 Legislative Report, and its merits were considered at length at a hearing held last year by this Committee. The proposal is strongly supported by the rail industry, which itself is seeking relief from the FELA, but is opposed by some railroad labor groups and the FELA plaintiffs' trial bar, who have funded the opposition to Amtrak's proposal. The proposal also has been favorably received by many of the state workers' compensation commissions. Although Amtrak supports elimination of the FELA for the entire railroad industry, using Amtrak to test the merits of the state workers' compensation programs for a three-year period would provide Congress with the data it needs to analyze this issue in an informed manner. Moreover, any financial savings achieved during the test period will directly reduce Amtrak's need for federal financial support. After monitoring the results of Amtrak's experience under workers' compensation, we strongly believe that Congress will conclude that railroad safety would be significantly enhanced, not only for Amtrak but for the entire industry, if FELA were repealed. Unless Congress so concludes, however, and adopts legislation to extend the test further or to repeal the FELA, Amtrak would return to operation under the FELA. I am willing to accept this risk; it is the

trial lawyers and others who oppose even a brief experiment in this area that are obviously unwilling to do so.

Conclusion

Amtrak has made enormous strides in the past several years in improving its financial performance and in reducing its need for federal financial support. This past year was extraordinary, and the prospects for continued growth are strong. We are now perhaps the most efficient passenger railroad in the world. However, we can do even better. With enactment of the statutory changes we have recommended in our Legislative Report, Amtrak's need for federal operating support could be significantly reduced. The growing demand nationwide for Amtrak service has demonstrated the substantial contribution rail passenger service makes to a balanced transportation system, to reducing the need for and enormous cost of additional highways and airports in congested transportation corridors, and to the energy security of the nation. With the support of the Administration and the Congress, and with access to the capital we need to acquire equipment and to improve our efficiency, Amtrak can continue to move ahead with even more improved service at a continually lessening cost to the federal government.

Update: Chase, MD FELA claims.

There were 12 Amtrak crew members on board the Colonial when it was involved in the Chase, MD accident in 1987. The engineer of the Colonial was killed. All 11 surviving crew members brought FELA claims, although most suffered very minor injuries. There was only one fracture, of the ribs, and only two had any kind of surgery (shoulder and knee). Only one crewmember has returned to work at Amtrak (which was after 3 months off). Of the 10 crewmembers who are still off, at least 9 claim psychological problems.

(12 Amtrak Crew)

Neck and Back Strains	10
Head Injury:	2
Shoulder Injury	3
Hip and Thigh Strain	0
Spine Injury	0
Post Traumatic Stress	9
Leg Injury	5

Chase, Maryland FELA Claims

Charlene Avery
Leg and neck injuries; phobia to trains.

Wendy Bacis
Arm, foot, and back injuries; short-term
post-traumatic stress syndrome (hereinafter PTSD).

Jonathan Evans
Shoulder and back injuries; PTSD.

Richard L. Evans
Neck and back injuries; knee surgery;
PTSD.

Michael Frederick
Neck, shoulder, and knee injuries.

*Cassandra Hewitt
Back injury.
*Returned to work 3/4/87.

Donald Keasey
Back injury; PTSD.

Ann Shaheen
Chest, knee, ankle contusions; back injury; PTSD.

**Donald R. Skinner
Head injury; PTSD.
**Management employee; has returned to work.

Sterline Spivey
Back injury; PTSD.

**Eric VonSchilgen
Back, chest, wrist, and nose injuries.
**Management employee; has returned to work.

Brenda Walker
Leg and hand injuries; PTSD.

Sandra White
Multiple contusions; shoulder surgery; PTSD.

Update: Glenwood springs, CO FELA claims

This derailment was of such a non-severe nature, that no passengers reported injuries at the time of the derailment. However, all 17 Amtrak On Board Service members reported injuries. All On Board Service members brought FELA claims. As of April 6, 1989, 15 of the 17 had returned to work, and one of the remaining two will return to work following a return-to-work physical.

(17 On Board Service Crew)

Neck and Back Strains	8
Head Injury:	3
Shoulder Strains	2
Hip and Thigh Strain	1
Strained Spine	1
Post Traumatic Stress	1
Leg Strain	1

Glenwood Springs, Colorado FELA Claims

 Madeline Beaudreaux
 Neck, back, and arm injuries.

Mary Black
 Back injury.

Americus Childress
 Back injury.

*Thomas Coleman
 Neck injury.
 *Returned to work 1/21/89

Gwendolyn Diggs
 Back injury.

Michael Haley
 Head injury.

*Judith Johnson
 Neck and back injuries.
 *Returned to work 1/18/89.

Dansby Larkin, Jr.
 Shoulder injury.

Andra Lebron
 Shoulder injury.

Howard E. Martin
 Hip and thigh injury.

Fred Payne
 Leg Injury.

*Derek Rauben
 Spine injury.
 *Returned to work 2/10/89.

Janet Shead
 Head injury; severe anxiety reaction.

Paul Stevens
 Back injury.

Courtland Stutts
 Post traumatic stress.

*Shirley Wicker
 Back injury.
 *Returned to full duty on 1/13/89.

Myron Worobel
 Head injury.

On-board service employees who were injured in the derailment of Train 1 - April 5, 1989: Los Angeles Union Passenger Terminal.

Judy Eaton, LSA Lounge

Injury: Multiple tissue

Doctor prescribed: Six days' rest and Motrin and
Prafonforte

Micheal Entzminger, Chef

Injury: Strained lower back, ankle, and hip

Doctor prescribed: Forty-eight hours' rest and Motrin and
Prafonforte

Jeanette Kelley, Service Attendant

Injury: Multiple tissue shoulder, neck, hip, and lower back

Doctor prescribed: Six days' rest and Motrin and
Prafonforte

Eddie Simpson, Service Attendant

Injury: Strained lower back and lumbar spine

Doctor prescribed: Forty-eight hours' rest and Motrin and
Prafonforte

Raymond Moore, Food Specialist

Injury: Strained lower back

Doctor Prescribed: Six days' rest and Motrin and
Prafonforte

All employees will be lost time and FRA reportable.

Neck and Back Strains	4
Shoulder Strains	1
Hip and Thigh Strain	1
Strained Spine	1
Leg Strains	2
Buises	2

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Answer to Question #1

Four of our major programs contributing to reduction of Federal operating 'support are highlighted below.

The highest priority in the equipment acquisition plan is the purchase of Viewliners to replace the aging HEP fleet. Passenger capacity increases of 50 percent for sleepers and 34 percent for coaches are projected. In addition to direct financial benefits, the Viewliner cars will enable us to market the trains as "all new", reduce maintenance costs, and increase utilization.

The equipment acquisition plan also projects the need for new diesel locomotives. We are contemplating two AC-powered designs, one for long-distance trains and one for short-distance corridor trains. Fuel savings of approximately 12 percent are expected from more efficient engine design. These acquisitions will begin replacement of the aging P30 diesels and F40 locomotives due for their third overhaul.

Modernization of our maintenance facilities will improve overall locomotive and passenger equipment availability and reliability, allowing more cars to run in revenue service. We are continuing projects that allow more efficient production-line operations. In addition to increased availability and timely overhauls, the revamped facilities will allow Amtrak to expand revenue enhancement efforts through continued promotion of our Equipment Services program.

The existing ARROW terminals are nearing the end of their useful life and experiencing frequent equipment failures. The ARROW Terminal Replacement Project will ensure that the reservation system can continue to function. The selected new generation of computer equipment will allow the application of yield management, designed to maximize reserved train revenues. Following full implementation of the system in 1990, Amtrak expects to increase reserved train revenues by at least \$15-20 million per year. Other benefits include improved system availability, higher productivity levels for all ARROW users, and lower operating costs due to cheaper replacement options.

[Please discuss your efforts to obtain private sector financing for additional rolling stock.]

Amtrak has had success in obtaining private financing for recent rolling stock acquisitions. In December 1987, Amtrak entered into a conditional sales agreement with General Motors Acceptance Corporation for the financing of nine new F40 diesel locomotives. The Bombardier passenger cars which were ordered last year currently are being financed under a secured loan provided by the Export Development Corporation of Canada. We anticipate converting this loan to a leverage lease to achieve an even more competitive financing rate. Finally, in December 1988, Amtrak entered into a leverage lease for 7 new AEM-7 electric locomotives, which were delivered during the fourth quarter of last year.

In my opinion, there is a definite limit to how much equipment we can finance without substantial federally appropriated capital. I do believe, however, that at present we can match from private sector financing any federally appropriated capital for new equipment.

[Would you name the groups supporting use of the gas tax for Amtrak and indicate what ways they are attempting to garner support for a dedicated funding source for Amtrak.]

Numerous environmental and consumer groups are calling for a more balanced national transportation policy, with particular focus on alternatives to congested highways and airports. On November 30, 1988, a group representing nearly every major environmental organization -- including the Sierra Club, the National Wildlife Federation, the National Audubon Society, and the Environmental Policy Institute, released its Blueprint For The Environment, a public report with numerous recommendations for dealing with a deteriorating environment. The Blueprint called for a significant increase in the gasoline tax as a critical tool for encouraging energy conservation and using the new receipts to improve alternative means of transportation, including Amtrak and mass transit.

Several organizations also have individually called for use of gasoline tax receipts to help fund Amtrak and mass transit. These include the National Association of Railroad Passengers, and its many associated state organizations, the Sierra Club, the World Resources Institute, the Environmental Policy Institute, Rails-To-Trails Conservancy, and the Coalition For Scenic Beauty.

The organizations supporting use of gasoline tax receipts for Amtrak and mass transit generally lack the resources of the various highway groups opposing use of gasoline tax receipts for non-highway programs. Theirs necessarily will be a grassroots effort focusing on the benefits for transportation and the environment resulting from improved alternatives to the transportation by automobile. Funding Amtrak through a dedicated revenue source such as a penny from the gasoline tax would enable Amtrak to address its severe equipment shortage as well as explore potentially lucrative new or expanded services.

[Why was Amtrak not included last year in the special relief provision for commuter railroads provided in the amendments to the Railroad Unemployment Insurance Act?]

The decision not to include Amtrak under the "publicly funded" commuter railroad provision stemmed from the timing of the Senate vote on the Technical and Miscellaneous Revenue Act of 1988, in which the RUIA amendments were included. The Senate took up the tax bill at the very close of the 100th Congress and strictly limited amendments to the bill. Although the proposal to include Amtrak in the commuter provision was without opposition and would have been effectively revenue-neutral -- that is, the government would lose \$16 million in RUIA tax revenues, but Amtrak's net federal operating deficit would decrease by the same amount -- the FY 1989 Transportation Appropriations bill (including funding for Amtrak) already had been signed into law and thus managers of the tax bill felt that including Amtrak at that late date would not technically be revenue-neutral. As a result, an amendment to include Amtrak was not considered.

This year, timing is not at issue. OMB again supports treating Amtrak as a publicly funded commuter railroad for purposes of the RUIA, and the funds saved by such treatment will reduce on a dollar-for-dollar basis Amtrak's need for federal operating assistance.

5. Please give me some background information on specific punitive damages awards against Amtrak in the last three years.

Punitive damages verdicts are a rare but potentially devastating event for any corporation. Most states impose no meaningful limits on the size of punitive awards. Juries are told that a punitive award should be large enough to deter even the most wealthy corporate defendant from ever again engaging in conduct similar to that at issue. Legal fees and expenses involved in the litigation of cases involving punitive damages are generally much higher than in otherwise similar cases due to greatly expanded discovery by plaintiffs. These combined circumstances often force defendants to settle at greatly inflated costs rather than go to trial and take the risk of a huge jury verdict.

Amtrak has paid large settlements in order to minimize its exposure to punitive damages. Derailments and collisions carry the greatest risk of large punitive losses, due to the number of injured passengers and the possibility of multiple punitive awards or a large number of settlements each inflated by a large risk avoidance component. For example, total settlements paid by Conrail arising out of the Chase, Maryland Amtrak-Conrail collision now approach \$80 million, a significant portion of which reflects a punitive damages component greatly in excess of any amount which would otherwise be necessary to compensate victims and their families.

A second particularly telling example of the risks associated with punitive claims exists in the ongoing litigation arising out of Amtrak's January, 1988 Chester, Pennsylvania derailment, in which an Amtrak train struck a piece of track equipment. Although few passengers were injured, none seriously, plaintiff's attorneys' efforts to create a punitive damages issue and thereby extract a much larger settlement from Amtrak have greatly inflated litigation costs and have consumed hundreds of hours of Amtrak executive time which would otherwise have been spent much more productively. If Amtrak cannot convince the court to dismiss the punitive claims, the risk of a very large verdict remains. Under these circumstances, the threat of punitive damages is being used in an attempt to extort settlements far in excess of the reasonable compensatory value of any passenger claims. This threat is especially severe under Pennsylvania law which permits unlimited punitive damages awards which need bear no relationship to any damages actually suffered.

[How has punitive damage liability hampered Amtrak from entering into agreements to permit new or additional passenger service over freight railroad lines?]

Punitive damage liability recently has impacted Amtrak's relations with three railroads. Amtrak and the Northern Virginia Transportation Commission have agreed in principal that Amtrak will operate commuter service between northern Virginia and Washington. The service would be operated on a cost-plus basis, with Amtrak earning a profit. NVTC has secured insurance to cover liability claims up to \$200 million. Conrail, however, fearing that liability from an accident involving punitive damage claims could exceed the \$200 million in coverage provided by NVTC, has refused to agree to allow the service to operate over its tracks into Washington. Enactment of Amtrak's punitive damages proposal would alleviate this concern. New Jersey Transit, Maryland DOT, SEPTA, Metro North and the MBTA all support Amtrak's proposal for similar reasons.

Amtrak also has experienced problems with some freight railroads resulting from concerns of exposure for punitive damage awards resulting from passenger injury claims. Both the Burlington Northern Railroad and the Santa Fe Railroad have taken the position that Amtrak must reduce the speed at which it operates to lessen the chance of accidents over their lines. Amtrak has refused to accede to such requests, and with a change in the top management of the Burlington Northern, we believe that this issue will not be pressed at this time. However, this is an example of the growing concern by the freight railroads, and one that must be addressed if we are to expand our service as needed.

QUESTIONS OF SENATOR KASTEN AND THE ANSWERS THERETO

Case of the blown-off knee cap: Given the above situation, could you please comment on the reasonableness of the system which would allow such a result?

The case cited above highlights the lack of reason endemic to the FELA system. That a jury could hold the employer responsible for the irrational action of an employee who violently attacked his supervisor -- for the sum of \$3.7 million -- is as unreasonable as the fact that, where the jury determines the employee to be at fault, there is no compensation whatsoever for the injured employee.

Although the case of "the blown-off knee cap" does not involve any sort of unsafe conditions which might have been corrected if brought to light, employee injury cases often do involve such situations. Where an employee must build a case to convince a jury that the employer, and not the employee, was at fault in order to recover any compensation, neither side is motivated to uncover a cause that might adversely affect its position in the litigation; as a result, the real cause is frequently hidden at least until litigation is completed. Under workers' compensation laws, the employee would be assured timely and fair compensation for injuries incurred on the job, and he would have no inducement to conceal hazardous work conditions. By working together, management and employees can create a safer and much more productive work-place than is possible under the combative FELA system.

QUESTION OF SENATOR BURNS AND THE ANSWER THERETO

[Senator Burns: Do you foresee a time when Amtrak could serve more than the 480 communities that it does presently? What would it take?]

Given the current federal budget deficit and the need for Amtrak to continue to reduce its need for federal operating assistance, Amtrak can add new service only if there is sufficient available equipment and only if any operating loss from the new service is paid for from non-Amtrak funds. It is frustrating to be the nation's rail passenger service provider, but be unable to add service to the many communities that have requested it. Absent a willingness by Congress to permit Amtrak to test new routes even if new service initially increases our need for federal financial support, there will be few new communities added to our system. Business on most new routes grows slowly, but we believe that there are many routes that have good potential.

Under present circumstances, Amtrak does evaluate the economics of some potential new routes, and where we have available equipment and the new service will cover its costs, we will add to our system. Last year, for example, Amtrak initiated new service between Dallas/Ft. Worth and Houston by splitting the Eagle (which operates between Chicago and San Antonio) at Dallas. We also were able to extend the Palmetto to Jacksonville, Florida from Savannah, Georgia. In both cases, revenues generated by the new service covered the additional costs. In addition, in May 1989, Amtrak will initiate its new Atlantic City service with service from Washington, Philadelphia and New York. By law, this service must cover 100 percent of its short-term avoidable loss, and we anticipate that revenue from the new service will far exceed such costs. With adequate equipment and funding, Amtrak could proceed much faster and accordingly serve many more communities.

Rail passenger service in this nation will be truly enhanced in the long run only if Amtrak is funded from a dedicated funding source, such as through the gasoline tax. This would provide the funds to buy the equipment we need to operate new routes and the ability to absorb the short-term losses associated with starting operation of new services.

Amtrak Service Workers Council

1989 MAY 18 AM 9 13

File: 712
May 15, 1989

The Honorable Ernest F. Hollings
Chairman
Commerce, Science and Transportation Committee
United States Senate
125 Russell Building
Washington, D.C. 20510

Dear Senator Hollings:

I am writing to set the record straight in regards to testimony before your Committee by Amtrak President W. Graham Claytor, Jr., wherein he stated that, after the December 25, 1988, Amtrak derailment near Glenwood Springs, Colorado, all sixteen of the on-board employees filed FELA claims even though there were no reported passenger injuries.

The obvious implication of such testimony was that the employees feigned, or exaggerated, injuries in order to progress FELA claims.

I have affidavits from several of the crew members (attached) stating that they did not file FELA claims after that derailment and were unaware of their co-workers filing claims either. I do know that at least one worker was injured in the derailment while stationed in the pantry.

As the affidavits show, what really happened was Amtrak instructed most of the crew to report to a hospital for examination, and concurrently to fill out injury reports. The crew missed the rest of the trip at Amtrak's instruction, which they were paid for without filing claims. Apparently, Amtrak is now, for obvious political reasons, trying to portray these payments for the rest of the trip as FELA claims.

I have also been told by Mr. Gordon Ingalls, who investigated the derailment on behalf of the National Transportation Safety Board, that Amtrak officials assigned to work with him on the investigation reported that there were no on-board service worker injuries. His report on the derailment, which is not yet published, will reflect that information.

As the Chairman of the Amtrak Service Workers Council, which represents the approximately 2300 on-board service workers, I must strongly protest against such a cynical portrayal of our members.

HERE Hotel Employees & Restaurant Employees International Union, AFL-CIO

1219 28th Street, N.W. Washington, DC 20007

TCU Transportation & Communications Union, AFL-CIO

3 Research Place, Rockville, MD 20850

TWU Transport Workers Union of America, AFL-CIO

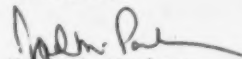
80 West End Avenue, New York, NY 10023



Senator Hollings
Page 2
May 15, 1989

Our members, most of whom are black, do a magnificent job in the face of grueling hours and adverse working conditions. They deserve better than to be so negatively portrayed; they should not be used as pawns in the railroads' efforts to scuttle FELA.

Sincerely,



Joel M. Parker
Chairman

cc: Ernest Monroe, Vice-Chairman
John Czuczman, Vice-Chairman

attachments

CREW REGISTER
TRAIN NO. 5-6

CHIEF

Date: DECEMBER 24, 1988

Position	Report	Name	Code	SS #	Signature	Room
Steward	10:30AM	C.M. SOWELS Y		OAK EMP	C.M. Sowels	13
Chef	10:30AM	W.J. WYATT	SF00	346-18-6791	W.J. Wyatt	
FS(2C) X	12:15PM	A. CHILDRESS	SF07	431-90-3718	A. Childress	C
FS(3C)	12:15PM	M. WOBEL	SF07	318-66-5240	M. Wobel	C
STUDENT STEWARDS	10:30	F. PAYNE		OAK EMP	F. Payne	10:30
ISA(1W)	10:30AM	C.L. STUTTS	SF12	037-22-2260	C.L. Stutts	
ISA(2W)	12:15PM	H.E. MARTIN	SF12	353-42-4137	H.E. Martin	
ISA(3W)	12:15PM	D. LARKIN	SF12	421-58-6852	D. Larkin	H
ISA(4W) (SLC)	12:15PM	A. LEBRON	SF12	577-70-8328	A. Lebron	H
LSA(L)	10:30AM	M.R. BLACK	SF13	309-42-8573	M.R. Black	E
LSA(U) (SLC)	10:30AM	M.E. HALEY	SF35	359-42-2819	M.E. Haley	E
TACO 0511	1:15PM	G. DIGGS	SF12	433-92-2659	G. Diggs	B
TACO 0512	1:15PM	J. SHEAD	SF12	342-42-1669	J. Shead	B
TACO 0513	1:15PM					
TASC 0531	12:15PM	R. STEVENS	SF12	355-50-4425	R. Stevens	13
TACO 2515	1:15PM	M. SILVA		15246666 SEA EMP	M. Silva	
TASC 2535	12:15PM	G. PATTON		500241650 SEA EMP	G. Patton	10
TACO 3516	1:00PM	E. TURNER		587-96-4342 LAX EMP	E. Turner	
TACO 3517	1:00PM	M. BEAUREPAUX		927-767857 LAX EMP	M. Beaurepau	
TASC 3530	12:15PM	T. COLEMAN		429-825308 LAX EMP	T. Coleman	13

My signature indicates that I have read and understand all bulletins now in effect. In addition, I have the necessary tools in my possession to

To Joel M. Parker
Chairman
Amtrak Service Workers Council
3 Research Place
Rockville, Maryland 20850

- 1) I was working on the California Zephyr which derailed near Glenwood Springs, Colorado on December 25, 1988.
YES (☒) NO ()
- 2) I reported an injury caused by the derailment.
YES (☒) NO ()
If the answer is "yes", please describe the injury: Back
of the head
- 3) I was instructed by Amtrak to file an injury claim.
YES (☒) NO ()
If the answer is "yes", by whom? Chief
- 4) I was instructed by Amtrak to seek hospital treatment.
YES (☒) NO ()
If "yes", by whom? Chief
- 5) I have filed a FELA claim with an attorney.
YES () NO (☒)
- 6) Amtrak paid me for my time lost without me filing a claim.
YES (☒) NO ()
If "yes", I have no outstanding claim for the injury against Amtrak.
YES () NO ()
- 7) I returned to work on my next scheduled trip.
YES (☒) NO ()
If "no", indicate when you returned to work or if you are still not working because of an injury suffered on the derailment: _____

If you have additional comments about what happened, please write them on the back or on additional sheets of paper.

Name (print) Myron H. Longbel
Name (signature) Myron H. Longbel
Date 4-30-89 Phone (optional) () - _____

RECEIVED
AMTRAK DIVISION
B.R.A.C.

MAY 12 1989

OFF. OF CRIMINAL CHMNL.
ROCKVILLE, MD.

To Joel M. Parker
Chairman
Amtrak Service Workers Council
3 Research Place
Rockville, Maryland 20850

- 1) I was working on the California Zephyr which derailed near Glenwood Springs, Colorado on December 25, 1988.

YES (X) NO ()

- 2) I reported an injury caused by the derailment.

YES () NO (X)

If the answer is "yes", please describe the injury: NONE
JUST SHAKEN UP

- 3) I was instructed by Amtrak to file an injury claim.

YES (X) NO ()

If the answer is "yes", by whom? John F. Kukes } chief OBS

- 4) I was instructed by Amtrak to seek hospital treatment.

YES (X) NO ()

If "yes", by whom? John F. Kukes } over

- 5) I have filed a FELA claim with an attorney.

YES () NO (X)

- 6) Amtrak paid me for my time lost without me filing a claim.

YES (X) NO ()

If "yes", I have no outstanding claim for the injury against Amtrak.

YES () NO (X)

- 7) I returned to work on my next scheduled trip.

YES (X) NO ()

If "no", indicate when you returned to work or if you are still not working because of an injury suffered on the derailment: _____

If you have additional comments about what happened, please write them on the back or on additional sheets of paper.

Name (print) Mr George W PATTON

Name (signature) George W Patton

Date 5-7-89

Phone (optional) (206) 413-7058

3 IF I WAS INJURED

4 OR WANTED TO BE EXAMINED FOR POSSIBLE INJURY

SOME OF EMPLOYEES WENT FOR CHECK UP, I, WAS SITTING WHEN
TRAIN DEPARTED, THANK GOD WE ^{WERE} GOING SLOW, ALL MY PERSONS WERE
OK, WE KEPT THEM INFORMED AND GAVE THEM BLANKETS, ALL SAY
ONE THING SEATTLE CREW BASE CARED ABOUT US, THEY CALLED
ALL OVER GLENWOOD SPRINGS LOOKING FOR US AND TALKED TO US
THEY CALLED OUR FAMILY THAT WE WERE OK I THINK THAT'S
A LOT OF HOGWASH THAT ALL THE EMPLOYEES FILED CLAIMS.
THANK YOU FOR YOUR CONCERN

Seafatten

RECEIVED
A. L. L. VISION
O.P.A.C.

MAY 11 1989

OFF. OF GENERAL COUNCIL
ROCKVILLE, MD.

To Joel M. Parker
Chairman
Amtrak Service Workers Council
3 Research Place
Rockville, Maryland 20850

- 1) I was working on the California Zephyr which derailed near Glenwood Springs, Colorado on December 25, 1988.
YES ☒ NO ()
- 2) I reported an injury caused by the derailment.
YES () NO ☒
If the answer is "yes", please describe the injury: _____
- 3) I was instructed by Amtrak to file an injury claim.
YES () NO ☒
If the answer is "yes", by whom? _____
- 4) I was instructed by Amtrak to seek hospital treatment.
YES () NO ()
If "yes", by whom? _____
- 5) I have filed a FELA claim with an attorney.
YES () NO ☒
- 6) Amtrak paid me for my time lost without me filing a claim.
YES () NO () '0 TIME LOST
If "yes", I have no outstanding claim for the injury against Amtrak.
YES () NO ()
- 7) I returned to work on my next scheduled trip.
YES ☒ NO ()
If "no", indicate when you returned to work or if you are still not working because of an injury suffered on the derailment: _____

If you have additional comments about what happened, please write them on the back or on additional sheets of paper.

Name (print) MARY SILVA

Name (signature) Mary Silva

Date May 1, 1989 Phone (optional) () - -

Mr Parker,

I was not injured in the derailment and felt no need to seek hospital treatment. When we finally left Glenwood Springs on Tuesday, December 27 we deadheaded until we were hooked up to the Pioneer in Salt Lake City. Both George Patton (Sleeping Attendant) and I worked backed to Seattle on the Pioneer and were back out on our regular positions immediately.

Mary Silva

Courtland L. Stutts

501 E. 109th Street
Chicago, IL 60646 27

TC 13

5/2/89

Mr J. Parker

Dear Mr Parker

In reference to
your Inquire, in light
of AMTRAK allegations
concerning Train Der-
ailment Dec 25, To The
best of my knowledge
none of The regular crew
of Five (5), Dining car
waiters have Filed a -
FELA Claim.

Furthermore, neither
myself or Chef WYATT
even reported an Injury.

I will as soon as
I get Together with -
over

my crew, have all
Five members of This
crew, sign a statement
That they have not
Filed a FELA Claim
and/or reported an
Injury, as applicable.

Please call on me, or
any member of The
crew, if needed in
The future in this
matter, and please,
advise.

Fraternally yours

Carlton R. Smith

RECEIVED
AMTRAK DIVISION
B.R.A.C.

JUN 01 1989

OFF. OF GENERAL CMMN.
ROCKVILLE, MD.

To Joel M. Parker
Chairman
Amtrak Service Workers Council
3 Research Place
Rockville, Maryland 20850

- 1) I was working on the California Zephyr which derailed near Glenwood Springs, Colorado on December 25, 1988.
YES ☒ NO ☐

- 2) I reported an injury caused by the derailment.
YES ☐ NO ☒

If the answer is "yes", please describe the injury: _____

- 3) I was instructed by Amtrak to file an injury claim.
YES ☒ NO ☐

If the answer is "yes", by whom? Claims Dept.

- 4) I was instructed by Amtrak to seek hospital treatment.
YES ☐ NO ☒

If "yes", by whom? _____

- 5) I have filed a FELA claim with an attorney.
YES ☐ NO ☒

- 6) Amtrak paid me for my time lost without me filing a claim.
YES ☒ NO ☐

If "yes", I have no outstanding claim for the injury against Amtrak.
YES ☐ NO ☒

- 7) I returned to work on my next scheduled trip.
YES ☐ NO ☒

If "no", indicate when you returned to work or if you are still not working because of an injury suffered on the derailment: Courtland L. Stutts JAN 29

~~TOOK OFF ONE TRIP~~
If you have additional comments about what happened, please write them on the back or on additional sheets of paper.

Name (print) Courtland L. Stutts

Name (signature) Courtland L. Stutts

Date May 2, '89 Phone (optional) (312) 264-6539

See note Enclosed

Senator EXON. Thank you very much, Mr. Claytor. Let me start out, if I might, with you, Mr. Lindsey. First, let me make a statement that S. 462 is a clean reauthorization bill, and we stand ready to make any necessary reasonable changes in it. But I tend to agree with Mr. Claytor's proposition that I think that it should go forward, and I would hope that the administration would not find it necessary to try and hold that hostage to some long-range plan because I assure you that we are interested and I believe Mr. Claytor has made it clear this morning that he is interested in working out a long-range plan where everybody can become involved, but that is not going to be an easy task.

You both talked about FELA. I am willing to listen to proposals on that. But I would also like to have some details from you, Mr. Claytor, on—did you say a \$14-\$15 million savings?

Mr. CLAYTOR. Yes, sir, there was a study by the GAO a few years ago that suggested savings, I think from 11-73 percent of our FELA payout but the costs are going up every year. In 1988 our FELA costs were 65 percent higher than they were in 1987. They are over three times what they were in 1982 for the same number of accidents or a smaller number of accidents—that much of an increase. So, the amount of money we are going to save is going to go up every year, so, it is substantial. We have the figures on that.

Senator EXON. Those studies that were made, did they take into consideration what costs might be if you eliminated the FELA and went to the state system?

Mr. CLAYTOR. Oh, yes, sir.

Senator EXON. That was all figured in?

Mr. CLAYTOR. Oh, yes, indeed. The biggest saving is going to be the avoidance of legal fees which in litigated cases go from 25 to 40 percent of the total amount paid, plus all the legal fees Amtrak must spend in defending them.

Senator EXON. I was interested in your statement about the accident at six miles an hour where no passengers were injured but several of the workers claimed injury.

Mr. CLAYTOR. The onboard service people.

Senator EXON. Then you indicated that there was some other case that I missed.

Mr. CLAYTOR. There was one on the Rio Grande in which a similar minor derailment occurred at relative slow speed. There were no passenger injuries reported at the time of the accident, and in that case I believe there were 16 onboard service claims.

Senator EXON. When did that take place?

Mr. CLAYTOR. That took place in December.

Senator EXON. Have there been any trials or court awards?

Mr. CLAYTOR. No, we have settled most of them because our claim agents have tended to do that. They know what happens when you get to court in these cases, although I have already made it clear that when we have cases like that in the future, we are not going to settle them until I have had a complete investigation to be sure that we have not got false injuries, and I think we have got a lot of those.

But, you see, under workers' compensation this would go right to a workers' compensation commission who then make a decision. The most important thing is that it is not based on fault. An em-

ployee cannot win in an FELA case until he shows that the railroad was at fault and that the employee who was hurt was not at fault.

And there have been a number of cases in which serious injuries occurred, but the jury found that it was the fault of the guy who got hurt, and he gets nothing even though he may be disabled for life.

On the other hand, you find people that claim they have a back strain, and the jury gives them a million dollars, and this is what is so grossly unfair about this thing. Workers' compensation was set up many years ago for every industry in the United States with the exception of railroads, and I think there is a special compensation statute for longshoremen, but other than that, every industry, the steel industry, the heavy industries, the industries that are far more dangerous than railroading all go under workers' compensation which is a no fault system.

If a guy gets hurt, he gets compensated on a scale that is set up by the statute after hearing, if necessary, before a commission. Far fewer lawyers are involved, and the employee gets paid no matter whose fault it was.

My point about this is: fault is terribly important because if a man is hurt in one of our shops, there is an immediate problem. He cannot get anything unless it was the company's fault, and so everybody on the labor side has to go to work at once to show that it was the company's fault.

On the other hand, the local supervisor is under considerable motivation to be able to show that it was the man's fault because if it was the man's fault, it does not cost the corporation a thing, he does not get anything. So instead of everybody getting together to find out why did this take place and what can we do to prevent it from happening in the future, everybody concentrates on whether it was his fault or the railroad's fault. This is a total waste of time and you thereby cover up what really caused the accident. It is a very bad situation, and we ought to get rid of it.

But I am prepared to say let us not get rid of it without a trial. Let us try it out on Amtrak for three years. At the end of three years the trial is over and unless Congress decides on the basis of the evidence that you want to extend it or apply to other people, then it reverts to the old system.

If we cannot prove our case by actual trial and error, we are prepared to give it up, and that is all we are asking.

Senator EXON. What support, Mr. Claytor, if any, is there from Amtrak employees to the three-year test that you are suggesting today and have suggested before?

Mr. CLAYTOR. Not really because the unions have opposed it. The unions are very close to the lawyers who run this thing, the union management, and I do not think I can say that we have had any employees who say it would be a good idea, although individual conversations with individual employees indicate that they are not really that much worried about it one way or the other, but they are not in a position to really take that position.

But the government is certainly for it. They have looked at this very carefully. GAO did a study on it and made it very clear that FELA did not make any sense.

Senator EXON. Yes, you said that. Mr. Lindsey, what is the residual freeze? You used that term, I believe. You know, I have heard of a flexible freeze and all that. What is a residual freeze?

Mr. LINDSEY. I am not sure I am able to define it all that well, Mr. Chairman. It is a term that some folk at an agency across town I am not supposed to name have for a portion of the budget—and I believe that is the portion that is negotiated about under the flexible freeze. That is as much as I know, Mr. Chairman.

Senator EXON. It is part of the flexible freeze concept that no one understands?

Mr. LINDSEY. I believe there are some who understand it, but I am not among them, Mr. Chairman.

Senator EXON. That is the most important testimony we have had for a long time.

Senator Burns.

Senator BURNS. Thank you very much, Mr. Chairman. I thought it was just the freeze that never goes away, I have a couple of questions. First of all, I want to thank you all for coming today and allowing some of our people to use you as resources for some questions. I have got to pay my respects to Mr. Claytor remembering the first trip that I had taken on Amtrak in many, many years. I had taken one up out of Malta at one time and got right on through Saco and everything, but we will talk about that later. We took a little trip with Mr. Claytor one night and found it is terrible to be president of a corporation and then break a dollar and a half fitting. We are two hours later getting out of the station, were we not? And there the boss was right there.

Mr. CLAYTOR. I was right there, and I apologize now for the Williamsburg trip, but I can tell you this. The people who were responsible for not having the right tools there to fix it in a hurry are never going to have that happen to them again. I was right there and I took care of that. I apologize again.

Senator BURNS. That is okay. Mr. Claytor, do you foresee a time in Amtrak's history—and I guess we are looking into the future a little bit—where they will be serving more than the 480 communities that they now serve?

Mr. CLAYTOR. Oh, surely. We would like to extend our service to a number of places, and in the past we have done all kinds of studies of this sort of thing nearly everywhere, but we have not spent money making studies in the last four or five years because in order to do that, we have got to have very substantial additional capital. You have got to get new equipment, new locomotives and, because in the early days of a new route, it is going to run at a big loss until you can—like a new branch bank that opens up—you are going to have to have some additional operating money until you get over the hump.

So without any of that it was absolutely futile to make an effort to start a new service and we have told everybody, there is no way we can start a new service. We cannot even start a new state-supported service.

We have told all the states who want—half a dozen of them want more 403(b) service that they would partially fund—we have said we cannot do that unless two things happen. You provide the cap-

ital money for new cars, and you pick up 100 percent of the loss for the first several years.

That is about the only way we can afford to do it.

Senator BURNS. You talked about the purchase of the 50 new cars, the new sleeper cars. Now you said an order will be placed in 1990. When will we be ready to take delivery on those?

Mr. CLAYTOR. I think we can get delivery about a year from the time of the order. Most of the 50 cars we think we could get in a year to 18 months from the time we place the order. We will certainly get the first car in less than a year.

Senator BURNS. You made a reference today, and I have noticed it in some of the materials that we have. Would you explain how, when Amtrak obtains private sector funds for capital projects, equipment purchase, you can go to the private sector?

Mr. CLAYTOR. We could not do this until about 18 months to 2 years ago. Because for the last five years the President sent the Congress a message that said, we want Amtrak liquidated at the end of the year. That does great things for your credit rating.

So we did not even try to borrow any money in those periods. However, Congress turned that down for four successive years. And based on that, we went to the suppliers who wanted to sell us locomotives and cars and said, we think we are here to stay, we think Congress has shown we are here to stay. Our financial results are better every year, and we would like to borrow money for the purchase of equipment.

And we worked out with them financing arrangements. Subsequently we have done even better than we could do with the suppliers by getting financing in the open market using some equity people who would put up some equity and get some tax breaks out of it.

And as a result of that, we have financed 100 passenger coaches, the first of which is just being delivered today, and 18 new locomotives, a total of \$150 million. However, my feeling is that without a lot of federal capital to back us up, liquid capital, we are not going to be able to keep up that much private financing.

But I am clear that what I can do is to match for purchase of equipment any appropriated capital money. You give me \$50 million, I will raise \$50 million in the market at a reasonable rate and have \$100 million. And that is what I am trying to do this year.

I know I can do that now. I think we can do that permanently. Whatever money I can get for capital in appropriations I can double by going to the private sector.

Now, President Bush, in the campaign used that very word. He said Amtrak needs more equipment, but it must be financed both publicly and privately.

Well, that is exactly what I am trying to do, exactly what he said, and I think we can do it.

Senator BURNS. Other than trying to lobby this man for a direct route from Billings to Alliance and Columbus and Omaha, I do not know what else I could add to this.

I want to thank you very much for coming. And thank you, Mr. Chairman.

Senator EXON. He has already made that commitment.

Mr. CLAYTOR. I absolutely have. All it takes is equipment.

Senator EXON. Mr. Lindsey, Mr. Claytor, thank you very much for your excellent testimony. There will be some additional questions from myself and others that we will submit to you in writing, which we would hope that you could promptly respond to for the record.

We will now call our next panel, Mr. Jim Kennedy, executive secretary/treasurer of the Railway Labor Executive Association, and Mr. Ross Capon, executive director of the National Association of Railroad Passengers.

Mr. Kennedy, we will start with you and would you. Please proceed.

STATEMENT OF JIM KENNEDY, EXECUTIVE SECRETARY/TREASURER OF THE RAILWAY LABOR EXECUTIVE ASSOCIATION, ACCOMPANIED BY WILLIAM MAHONEY, GENERAL COUNSEL

Mr. KENNEDY. Thank you very much, Mr. Chairman. I want to let you, Mr. Chairman, and Senator Byrnes know that I am accompanied on my left by counsel for the RLEA, Mr. William Mahoney, and I can hear my voice and I can see that this laryngitis is starting to set in, so, excuse me, I had better throw a little water on it.

I have submitted a full statement for the record and I would ask that it be accepted and I will attempt to summarize—

Senator EXON. Without objection, that is so ordered.

Mr. KENNEDY. The RLEA and its affiliated labor organizations, as the representatives of the employees of Amtrak, is most appreciative of this opportunity to voice its views to this subcommittee on matters of such great importance and great consequence to Amtrak and, indeed, all railroad employees.

The RLEA supports unequivocally the authorization for Amtrak as contained in S. 462. The RLEA, however, does oppose Amtrak's attempt to strip from its employees their right to adequate compensation for injuries sustained by them through the fault of Amtrak.

We also oppose Amtrak's effort to eliminate employees' rights to honor the picket lines of their brother employees on other railroads, as well as their right to seek the aid of those employees in labor disputes which they may have in the future with their employer, Amtrak—rights which have been unanimously upheld very recently, in 1987, by the Supreme Court of the United States.

My testimony is based upon Amtrak's 1989 legislative report to the Congress. I have not seen Amtrak's testimony until this afternoon, or just heard it this afternoon. Of course, Amtrak could save money by the repeal of FELA, and, while it contends such a repeal would save it about \$15 million a year, it does not tell you what percentage of its operating budget that savings would be.

According to our computations, it amounts to only 2 percent of its requested authorization and, of course, considerably less of its overall operating budget. The employees of Amtrak, Mr. Chairman, have already made great personal sacrifices to cut Amtrak's operating costs. They now work for 12 percent less than their brothers in comparable jobs in the rest of the industries. If an employee goes to Amtrak from another railroad, as many have to do or have had to do in the past few years, that employee immediately suffers a 12 percent cut in pay.

Amtrak would have these employees barred from securing adequate compensation for debilitating injuries caused by its negligence. But this is not Amtrak's cause alone; it is the rail industry's cause. The railroad industry has been attempting for some time to eliminate FELA and Amtrak, apparently, is taking the point on this for the industry.

Amtrak seeks a temporary, three-year experimentation of FELA, and we do spend a good deal of time, of our testimony, as Mr. Claytor said, talking about FELA elimination because we just do not see how this experiment is anything else but scrambling the eggs, which will be unable to be unscrambled, and we are not willing to gamble with the lives and limbs of our members for three years, for three months, to see that a system like—that is lost to them, like the Federal Employees Liability Act, which provides, we say—we are convinced provides for safety for railroad workers, for railroad travelers and for the communities through which the nation's railroad system runs.

We all know what happens to temporary taxes; they invariably become permanent. We have no illusions that Amtrak's three-year experiment would not become permanent, but, even if it did not, we can not condone experimenting with the economic and physical welfare of Amtrak's employees. Additionally, we oppose Amtrak's experimentation because FELA is as much a safety law as it is a compensation law. FELA is an important element in establishing corporate accountability in the area of rail safety. If that element of accountability is removed, the safety will be lessened not only for employees but for passengers as well.

If Amtrak is correct in its estimate of \$15 million to \$20 million a year in savings by the repeal of FELA, it means this will be money provided Amtrak by employees who have been seriously injured by Amtrak's own negligence. We do not believe those employees should subsidize Amtrak by their injuries, in addition to the subsidies they already provide Amtrak by their substandard pay and their income taxes.

As citizens of this country, as taxpayers, the removal of employees' rights to compensation under FELA and the right to honor the picket lines of other railroad employees, or to engage in such secondary picketing themselves, we respectfully submit, should not be the subject of authorization legislation. Such issues are industry-wide in their consequences and should be considered on an industry-wide basis.

As to Amtrak's remaining legislative proposals, with the permission of the subcommittee, since they are new to us, we will submit a written statement of position on its suggested modification of its obligations under RUIA. I believe I heard Mr. Claytor say that everybody was in support of it, or at least no one was in opposition to it. And my initial reaction to the support was tempered a little bit when I heard that OMB was in support of it, so I think maybe we had better take another close look at it if OMB is for it. We also will give you our opinion on its insulation from punitive damages in tort cases.

Thank you for your attention, but there are a couple of things that came up in Senator—he has been almost everything else, but not a Senator—in Mr. Claytor's remarks, President Claytor's re-

marks. He talked about the Rio Grande-Glenwood Springs incident where on-board services people were involved and, supposedly, these folks, I do not want to misquote him, but they filed for some claims, several of them, all 14 of them and no passengers filed.

I am a little confused. I see that, in his statement, that, initially, no passengers filed. But, as to the employees, I cannot comment on the Los Angeles case; it just happened last night. I did not know he was going to use it as an example. But we are told that, first of all, all of those employees are back to work, that none of them have filed FELA claims, none of them have filed FELA claims, that they did indeed file reports, and they did indeed go to the hospital because both of those things are required of them as Amtrak employees, and that is what they have done. And none of them, to this date, have filed FELA claims and we have no information that they are going to file FELA claims.

Senator EXON. Mr. Kennedy, just for the record, since this has come out, since Mr. Claytor did make the allegation, would it be possible for you to get the names of those 14 people? Do you know who they are? Do you, as a union, know who they were?

Mr. KENNEDY. I do not know as I sit here, but, yes, we, the unions, do know, the particular unions to which they belong. We know those people.

Senator EXON. There is no question but whether—and I have some reservations putting this on the authorization bill, but this FELA matter is going to come up and we are probably going to have a separate hearing on that one of these days. But since it has become an important part of this testimony today, it would be fully in order if you could get and supply for the record or to myself as Chairman, and I will distribute to the other members of the subcommittee, who those 14 people were, and any details that we have with regard to their claimed injuries, their reports and things of this nature, because when we hear these kinds of things we are, of course, concerned about them and we would like to hear the other side of the news also.

Mr. KENNEDY. I listened to Mr. Claytor very carefully and I believe he did say that no FELA claims were filed. But he did say claims were filed.

Senator EXON. Mr. Claytor is holding his hand up back there.

Mr. CLAYTOR. I have already got the permission during my testimony to submit for the record a list of the claimants and the nature of their claims. And you had accepted it for the record and I have it here.

Senator EXON. You say that that was part of your statement that was included in the record?

Mr. CLAYTOR. Yes, sir.

Senator EXON. Thank you very much.

Mr. KENNEDY. I also heard, unless I misunderstood him, that he said that no FELA claims were filed.

Mr. CLAYTOR. No FELA claims were filed on the accident yesterday.

Senator EXON. I believe I heard him say he did not know whether claims had been filed. Four people, I believe he said—

Mr. KENNEDY. The Glenwood Springs accident is the one I am talking about.

Mr. CLAYTOR. Sixteen employees have filed claims.

Mr. KENNEDY. Well, I would like to submit our information on that, too.

Senator EXON. The information that he has is now public information because it has been included in the record and we can supply you with that. Please go ahead.

Mr. KENNEDY. And on another matter, there is an impression made, and, again, I am not suggesting he said anything inaccurately, but the impression is that since FELA is a fault procedure and not a no-fault procedure, that those people who are injured and it is not through the negligence of Amtrak are left unprotected. These people get nothing.

Well, they get nothing under FELA, but there is the Railroad Unemployment and Sickness Act, and these people get close to \$600 a month, I believe is the amount, and most of them are also covered by supplemental plans that their organizations have negotiated. And these people are recompensed on a no-fault basis.

But the key to this situation, from our point of view, is that we have not left those people—I wanted to make it clear that we have not left those people who are not recompensed through the FELA system without any kind of protection from those who have extraordinarily serious injuries and it was not through the fault of Amtrak, that the unions have not done that. And, with that, that is the end of my testimony, Mr. Chairman.

[The statement and questions and answers follow:]

STATEMENT OF JAMES J. KENNEDY, JR., EXECUTIVE SECRETARY-TREASURER, RAILWAY
LABOR EXECUTIVES' ASSOCIATION

My name is James J. Kennedy, Jr. I am Executive Secretary-Treasurer of the Railway Labor Executives' Association to which I was elected by the members of the Association. The offices of the RLEA are located at 400 First Street, N.W., Washington, D.C. 20001.

The RLEA is an unincorporated association whose members are the chief executive officers of the standard national and international railway labor organizations which I list below, representing virtually all of the contract employees on the railroads operating in the United States.

I speak today in support of that level of funding for Amtrak which will permit it to continue a quality program of expansion and service to the ever increasing numbers of our citizens who utilize rail travel by choice or by necessity. We urge the Congress to authorize federal funding for Amtrak requested in its 1989 Legislative Report to the Congress and contained in the legislation introduced by Chairman Exon as S. 462 in the amounts of \$656 million for FY 1990, \$684 for FY 1991 and \$712 for FY 1992. Amtrak has proved itself to be a vital service that must be continued. It will be much more costly to restore that service at some future time if we fail to fund it adequately now.

Amtrak has proven its worth to our nation and it becomes more valuable with each passing year. However, all is not well at Amtrak. Over the past three to four years its labor relations have deteriorated and in the past twelve to eighteen months that deterioration has become significant as exemplified by Amtrak's legislative proposals in 1988 and this year.

Amtrak has placed its employees in a Catch-22 situation. The employees must support Amtrak's efforts to secure adequate funding which is necessary for stable, and even increasing, employment. Yet Amtrak also seeks the enactment of a legislative

program that would strip its employees, who have already sacrificed 12% of their wages to keep Amtrak viable, of certain of their statutory benefits and protections. The RLEA, therefore, emphatically opposes the program of legislation Amtrak has submitted to the Congress in its 1989 Legislative Report, which would adversely impact upon its employees.

I have not had an opportunity to read the testimony Amtrak has submitted to this Committee. However, I have read Amtrak's Legislative Report, and I assume that Amtrak's testimony as submitted to this Subcommittee tracks the substance of and recommendations contained in that Report.

Amtrak's "new approach" to its financial problems is most disappointing to railroad labor. Until its authorization requests of last year, Amtrak approached the Congress from a most positive aspect in seeking the necessary funding authorization and appropriations to provide this country, with what we believe to be, essential rail passenger service. Now Amtrak has apparently decided to switch to a negative course, largely ignoring the enormous sacrifices and contributions in effort and money which its employees and the representatives of its employees have made toward its success. Amtrak unmistakably demonstrates that it has initiated an all out legislative attack upon its employees. In doing this, Amtrak with no justification, economically or philosophically, apparently has decided to join its brother railroads in the private sector in their efforts to secure Congressional elimination of the statutory and even contractual, rights of railroad employees which history has

demonstrated and the Congress and Supreme Court have agreed are required by the public interest.

Perhaps Amtrak has determined to become the stalking horse for the rail industry, using what it perceives to be the superficially appealing argument before Congress that by cutting back on the rights and benefits of its employees Amtrak would, ostensibly at least, be saving taxpayer dollars, rather than the mere stockholder dollars privately owned railroads would save were they to do the same things Amtrak proposes.

Whatever Amtrak's reasons may be, its new policy is particularly difficult for rail labor to accept or even understand given the fact that were it not for the representatives of Amtrak's employees, and specifically the Railway Labor Executives' Association, Amtrak would never have come into existence. Indeed, it would not have survived beyond its first year of existence were it not for the time, the effort and the legislative support given it by the representatives of its employees. Ironically, that support and the financial sacrifices of its employees, are the primary reasons Amtrak is in the position today to seek to strip from those same employees the statutory and judicial protections they now enjoy.

The anti-employee policy embraced in Amtrak's 1988 legislative program and in its 1989 Legislative Report to the Congress is not only short-sighted and counterproductive, but self-destructive. If Amtrak is to succeed, it must do so by providing a service that is attractive to the public. Those of us who are old enough to remember what happened to rail passenger

service in the 1950's and 1960's when the private carriers then providing it deliberately downgraded the quality of their service and destroyed the morale of their employees providing that service, know that the course now laid out by Amtrak will destroy it as it destroyed private rail passenger carriage in this country 30 years ago.

Certainly, Amtrak can reduce its operating costs by stripping from employees the rights they have secured over the years from this Congress and the Supreme Court under the Railroad Unemployment Insurance Act, the Federal Employers Liability Act, the Railroad Retirement system, employee protective arrangements and the Railway Labor Act (e.g., secondary picketing) which Amtrak attempted to achieve last year. This year Amtrak's main focus is on FELA. It has withdrawn, temporarily, at least, its attempt to withdraw from the Railroad Retirement System pending the report of the congressionally created Railroad Retirement Reform Commission. It has modified its stand on Railroad Unemployment Insurance and punitive damages in tort cases. The RLEA will review these modified proposals of Amtrak at its April 11, 1989 meeting and, with the permission of the Subcommittee, its position on those legislative proposals will be submitted in a written statement to the Subcommittee as soon as possible after that April 11 meeting.

Should Amtrak achieve its primary goal for this year--the elimination of FELA protection for its employees--it will save only about 2% of its overall appropriation and a much lower percentage of its overall operating budget. But would that very

small saving satisfy Amtrak or will the pressure to cut costs compel it to return to the Congress next year or the year after and seek legislation to impose the minimum wage upon all its employees or the reinstitution of the 12-hour day, 6-day week? There can be no doubt that the imposition of such burdens upon its employees would further reduce its operating costs; but there likewise can be little doubt that Amtrak by that time will be enjoying very little revenue because the quality of its service would have deteriorated at a rate commensurate with the deterioration of the rights and morale of its employees.

Why Amtrak has determined to launch these attacks upon its employees is unclear, but there can be no doubt that its policy constitutes an all out attack upon the best interests of those who man its operations, maintain its equipment and facilities, and otherwise provide its service to the public. We believe that policy to be extremely unwise in concept and ominous in result.

Before I address briefly the primary employee right which Amtrak would have this Congress eliminate and the grounds stated by Amtrak in support thereof, I would like to point out that the legislative changes here sought by Amtrak transcend mere monetary authorizations; they involve basic policy questions as to the direction in which this Congress wishes railroad labor relations to proceed. Such profoundly significant issues should be carefully considered on their own merits and as to their effects upon our national rail transportation policy and not as a minor part of the consideration of authorization for one railroad.

Exemption From The Federal Employers Liability Act

Amtrak argues that it could save on the average about \$15.3 million annually if its employees were covered by state workers' compensation laws rather than FELA; and, that FELA creates an adversarial relationship between Amtrak and its employees because the employees must show Amtrak was at fault in causing the employee's injury.

FELA, it must be noted, goes well beyond mere compensation for injuries. While FELA has proved effective for providing injury compensation, it has also proved to be a cornerstone of safety in the railroad industry and an important element in establishing corporate accountability. Today this is extremely important given the serious flaws in the regulatory programs dealing with railroad safety that have developed over the years and the Federal Railroad Administration's weak enforcement of the safety laws.

Railroading is an inherently hazardous occupation and FELA, as a negligence liability law specifically tailored to the character of the rail industry, is a most important safety incentive in that industry. This safety-enhancing feature of the law is as important to the public as it is to the workers. Safe working conditions translate into safety for passengers and for the communities through which trains travel.

Amtrak, of course, is not alone in seeking elimination of FELA. The entire railroad industry seeks its repeal. This interest in removing FELA from the statute books coincides with another development in the industry: the growing numbers of

claims for hearing loss and occupational disease stemming from exposure to asbestos and other toxic substances being filed by railroad workers. Without FELA, the railroads, including Amtrak, would escape accountability and much of the financial responsibility for these types of injuries inflicted upon their employees.

Last year in testimony before this Subcommittee, Amtrak claimed it could save \$16 million, or about 42%, of the \$38 million paid in FELA claims if it were removed from FELA coverage. This year it contends it could save somewhere between 11% and 73% (depending, I suppose, upon the state compensation law applicable) of the \$49.3 million it states it paid out in 1988 under FELA. However, one must remember that that \$38 or \$49 million was paid to employees under a negligence statute (FELA) which required Amtrak to be at fault in order to be liable. In other words, Amtrak would save \$16 to \$20 million in injuries to employees caused by its own negligence and that saving would come directly from the pockets of those injured employees. In addition, only 4% of FELA claims exceed \$75,000 and they involve the most debilitating injuries.

Costs for Amtrak under state-type or no-fault system laws would be likely to be no lower than under FELA. Cost increases are similar under FELA and the Federal Longshoremen's and Harbor Workers' Compensation Act (a no-fault system). Between 1979 and 1984, payments per claim rose 137% under the latter program and 157% under FELA. In addition, 80% to 85% of FELA cases are settled without the employee hiring a lawyer, meaning that the

payment of legal fees (usually based on a standard 25% contingency) is limited to 15% to 20% of the cases. Amtrak's own figures from its Report show that of 1845 claims submitted in 1988, 1476, or 80%, were settled. The U.S. Department of Labor estimates that under the no-fault longshoremen's system legal representation is obtained in about 15% of the cases.

As for the claim that FELA creates adversaries of Amtrak and its employees, it is clear that, based on Amtrak's 1988 figures, FELA placed Amtrak in an "adversarial" relationship, with about 1.5% (369 of approximately 24,000) of its employees, that is, those employees who received FELA payments as a result of lawsuits. Such a miniscule percentage hardly justifies repeal of the law. In addition, experience demonstrates worker compensation programs to be no less adversarial. While only a bit over 1% of FELA cases are determined by the courts, much higher percentages of worker compensation cases are contested in many states, e.g., 13% in Mississippi and 27% in Illinois.

Amtrak's Legislative Report also contends that somehow FELA "strongly discourage[s] [employees] from returning to work or seeking rehabilitation" and it cites two accidents in support of that conclusion: Chase, Maryland and a "minor Amtrak derailment near Glenwood Springs, Colorado." Considering the severity of the Chase accident it is rather surprising that more employees were not injured and that any of those injured returned to work. Regarding the Glenwood Springs derailment, one must remember that employees are often on their feet at the time of an accident and thus are most vulnerable to serious injury. Amtrak

says nothing about the type or extent of the injuries suffered by the employees at Glenwood Springs, or indeed, at Chase, Md.

Regarding Amtrak's contention that FELA tends to stultify efforts of Employee Safety Committees, Amtrak does not indicate that the Committees' work is hampered by investigation and recommended correction of the causes of past accidents which resulted in FELA claims which have been closed or in the myriad of accidents that do not result in FELA claims.

In any event, Amtrak is an integral and important part of railroad industry operations and its employees should not be singled out for discriminatory treatment in the elimination of any of their statutory rights as advocated by Amtrak. The issue of the elimination of FELA and other railroad employee statutory rights and protections, if worthy of consideration at all, should be the subject of consideration by appropriate committees of the Congress on an industrywide basis.

Preventing Secondary Picketing Against Amtrak

This issue would seem quite clearly to be an undertaking by Amtrak on behalf of the entire railroad industry. Amtrak has never been threatened with secondary picketing as a result of a strike on another carrier in the railroad industry. Amtrak, of course, could be affected by secondary picketing should a railroad on whose property Amtrak operated be picketed. Amtrak has offered no reason why it should be singled out apart from the industry to be exempt from secondary picketing. This effort of Amtrak's should be summarily rejected.

We respectfully submit Amtrak's legislative proposals discussed above should be rejected.

Thank you.

Response of RLEA Executive Secretary J.J. Kennedy
To Question by Senator Hollings

Question:

It seems that an underlying tenant of the arguments in support of an exemption from FELA for Amtrak workers is the frequency by which these claims are filed and the disincentives for early rehabilitation and speedy return to work by the injured employee. Do you have any statistics to refute these claims or comparisons between injury claims by similar industries?

Answer:

The frequency with which FELA claims are filed is dictated by the frequency with which railroad workers suffer injuries. FELA claims, in fact, may be a more accurate barometer of railroad safety conditions than the safety data published by the FRA. A recent GAO report found that Amtrak under-reported lost work days due to worker injuries by 276%, and under-reported accidents by 27%.

As to rehabilitation, the flexibility of FELA allows greater responsiveness to rehabilitation needs than do the rigid and formulaic state worker compensation systems. Under FELA, injury awards, including costs for rehabilitation, are tailored on a case-by-case basis reflecting the specific needs of each individual's circumstances. Worker compensation works on a system of pre-set benefit schedules which may or may not fit an individual's personal circumstances.

Response of RLEA Executive Secretary J.J. Kennedy
To Questions by Senator Kasten

1. Question:

Your testimony supports on page six that if Amtrak got its three year test, morale at Amtrak would decline. Why would treating Amtrak employees like most other American workers impact morale at Amtrak?

Answer:

Amtrak workers have already made great personal sacrifices to cut Amtrak's operating costs. They work for 12½ less than their brothers in comparable jobs in the rest of their industry. If Amtrak workers were now to be subjected to a "trial" exemption from FELA, the effect on morale would be negative for two reasons: First, they would feel that once again they were being made to sacrifice more than everyone else in the industry. Second, even apart from their status relative to other railroad workers, they would feel that a fair and efficient means of injury compensation was being stripped from them and replaced with an inferior system (worker compensation) that has low and arbitrary benefits, and which in many states has become far more dispute-prone than FELA.

2. Question:

Your testimony also states that issues like FELA should be "carefully considered on their own merits and as to their effects upon our national rail transportation policy." Doesn't that argue we should try Amtrak's test?

Answer:

No, it means that using Amtrak employees as guinea pigs for the rest of the industry is wholly inappropriate. Specifically, as I said in my statement: "Certainly, Amtrak can reduce its operating costs by stripping from employees the rights they have secured over the years from this Congress and the Supreme Court under the Railroad Unemployment Insurance Act, the Federal Employers' Liability Act, the Railroad Retirement system, employee protective arrangements and the Railway Labor Act...[But] they involve basic policy

questions as to the direction in which this Congress wishes railroad labor relations to proceed. Such profoundly significant issues should be carefully considered on their own merits and as to their effects upon our national rail transportation policy and not as a minor part of the consideration of authorization for one railroad."

3. Question:

You say on page seven that FELA was specifically tailored to the character of the railroad industry. After some 50 years, don't you think it's time to retaylor it?

Answer:

No, because FELA is constantly retailored on a case-by-case, court-by-court, jury-by-jury basis. Each recovery is adjusted to fit the specifics of that case, including the individual's actual economic losses. By contrast, worker compensation is characterized by 50 different state systems, each of which rigidly locks in its own benefits schedules, limitations, and duration periods, all of which are difficult to update as costs, wages, and other conditions change.

4. Question:

On page eight, you state that costs for Amtrak "under state-type or no-fault system laws would likely be no lower than under FELA. GAO found that even under the most liberal state compensation system Amtrak would save money. Do you have any new data to add to the GAO report?

Answer:

The GAO made no study of and reached no conclusions regarding the administrative cost to Amtrak of participating in some 48 different state compensation programs. In fact, the GAO qualified the findings in its report, pointing out that switching to state worker compensation systems may result in an increase in several elements of Amtrak overhead costs. And as was also stated on pages eight and nine of my testimony, only 15% to 20% of FELA claims involve lawyers which, according to the U.S. Department of Labor, is about the same as the percentage of lawyer participation under the no-fault longshoremen's system of compensation.

5. Question:

Do you have any data or evidence to suggest that

workers' compensation undermines safety?

Answer:

As we view the issue, it is not whether workers' compensation undermines safety, but whether removing FELA protection from Amtrak workers will undermine safety in terms of the removal of an effective deterrent against employer negligence and in terms of lowering Amtrak employee morale (see answer to Question No. 1). We are convinced removing FELA would undermine safety on Amtrak.

6. Question:

You claim that only four percent of Amtrak's FELA claims exceed \$75,000, yet Amtrak paid out \$42 million last year in claims. Doesn't this imply that the problem is with huge recoveries in only a small number of cases, a situation that should be eliminated and would be eliminated under workers' compensation?

Answer:

Perhaps, the answer to this question depends upon one's point of view. If one believes that an employer should be protected from the consequences of its negligence that results in catastrophic injuries to its employees, the answer as to whether FELA should be eliminated would be "yes". If, on the other hand, one believes that employees should be protected, insofar as possible, from the consequences of catastrophic injuries caused by a railroad employer's negligence, the answer is "no". We believe that answer is "no".

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April 17, 1989

**ADMITTED IN NEW JERSEY ONLY
***ADMITTED IN MASSACHUSETTS ONLY
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Honorable J. James Exon
Chairman
Subcommittee on Surface Transportation
Committee on Commerce, Science and Transportation
United States Senate
Hart Senate Office Building
Washington, D.C. 20510-6125

Re: S. 426. Amtrak Authorization Legislation

Dear Chairman Exon:

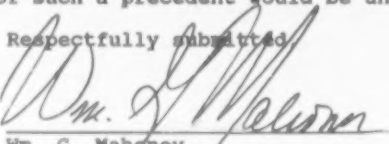
During the course of his testimony before your Subcommittee on April 6, 1989, RLEA Executive Secretary J. J. Kennedy stated that he had no position at that time to express on behalf of the RLEA with regard to Amtrak's requested legislative modifications to the Railroad Unemployment Insurance Act and its request that it be protected against punitive damages in tort cases. Amtrak's reason for the latter request was that railroads over which it performed its operations were insisting upon complete indemnification in the event accidents occurred while Amtrak was operating on their property, even though such accidents may have been due to the negligence of the carrier which owned the tracks. Amtrak testified with particular reference to Conrail's ownership of a Potomac River bridge, access to which Conrail refused Amtrak unless Amtrak agreed to such complete indemnification.

The Railway Labor Executives' Association at its regular meeting held on April 11, 1989, considered the two Amtrak legislative requests referred to and concluded that it could not support Amtrak's request for immediate full, rather than phased-in, experience rating credit under RUIA because, as Amtrak testified, this would result in some \$16 million in savings to

Amtrak which would have to be made up by other railroads. Since the RLEA had agreed with the Association of American Railroads on the terms of the present law, the members of the Association felt they would be reneging on an agreement they had made with the AAR if they were to agree to a legislative modification which would cost the railroads an additional \$16 million over two years. Since the RLEA had no indication that the railroads were agreeable to this modification, the members felt they could not agree to it.

The primary difficulty which the membership of the RLEA had with Amtrak's elimination of punitive damages in non-FELA tort actions was that agreement to such relief for one railroad, in this case Amtrak, would lead to similar requests for similar relief by other railroads throughout the country. RLEA simply felt that the establishment of such a precedent would be unwise.

Respectfully submitted


Wm. G. Mahoney
Counsel to RLEA

Senator EXON. Mr. Kennedy, thank you very much. We will go on to Mr. Ross Capon. We are glad to have you before the committee. Please proceed.

STATEMENT OF ROSS CAPON, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF RAILROAD PASSENGERS, ACCOMPANIED BY SCOTT LEONARD, ASSISTANT DIRECTOR

Mr. CAPON. Thank you, Mr. Chairman, for the opportunity to appear here. On my right is Scott Leonard, our new assistant director. I have submitted a statement and I trust the entire statement will be included in the record.

Senator EXON. Without objection, that is so ordered.

Mr. CAPON. We strongly support S. 462 and the funding levels in it. We especially are eager to see Amtrak get the new Viewliner cars to replace its old Heritage cars. As I understand, the Heritage cars will, in fact, be kept on standby to be used during peak periods of the year. If they are used on that limited basis, they can be used forever. That will enhance Amtrak's economics in terms of its ability to enlarge the fleet at a relatively low cost during peak period times of the year.

Former Federal Railroad Administrator John Riley said replacing these Heritage cars would permit the same 50 percent maintenance cost reduction that Amtrak realized when the Superliners were introduced out west. I want to emphasize the fact that Amtrak's ridership and revenues have increased in spite of very stiff fare increases. As Mr. Claytor recently wrote to the Journal of Commerce, "Since 1981, Amtrak fares rose an average 48 percent, while airfares fell 6 percent and gasoline prices declined 30 percent."

This came home to me very clearly yesterday when I received a phone call from one of our local members who says he loves to take the train and his wife hates it. He was traveling to Tampa in July and he was disappointed to find out that the cheapest round-trip fare he could get on Amtrak, even traveling coach, was \$221, and his wife was ready with the fact that he could do PanAm for only \$20 more, and he was having a difficult time arguing with his wife about that.

And I guess the obvious question from a public policy standpoint for the long term is, if we have airport congestion and highway congestion, why are we pricing the railroads so high? And, of course, the answer in the short term is that Amtrak does not have any more equipment and so they cannot justify giving away the seats. But in the long term, it is a lot easier to put more cars on existing tracks than it is to build new airports, and I hope that in the long term we will get the incentives that different pricing structures of the different modes are sending straightened out.

Now, I said in my written testimony we support the legislative proposals contained in Amtrak's 1989 legislative report. I singled out two of them. I wanted to single out two more. One was the limit on punitive damages. It occurred to me that there might be some question of where we as a consumer organization stand on that because, after all, it is the passengers who would be collecting the damages. As a non-lawyer, I wondered, is it right for a con-

sumer group to be defending a management attempt to eliminate the ability to collect punitive damages on the part of our passengers?

I talked to one of my board members, who is an attorney who represents plaintiffs, he says, in lots of accident cases, and he was not reluctant at all to endorse Amtrak's proposal. As he explained it to me, there are special awards which are documented by specific bills such as hospital bills, which, obviously, is not at issue in Amtrak's proposal. There are also what he called general awards which go to pain and suffering and are especially important where there are permanent injuries. And that, as I understand it, also would not be affected. And then, in his terminology, punitive awards is yet another category—designed to make an example out of Amtrak, and he was not at all reluctant to endorse Amtrak's legislative proposal there.

I talked to another one of my board members, who is an official with a regional transit authority, and he said that his authority, which is Southeastern Pennsylvania Transportation Authority (SEPTA), would be dead in the water if they did not have a \$1 million per incident liability cap. He says that they are paying out \$54 million in insurance costs, which is about 10 percent of their budget. Without that cap, it would quickly go to \$100 million and, in a few years, it would be half of SEPTA's budget, he thinks, and then SEPTA would have to shut down.

There is a specific reason why we have an interest in this punitive damages issue. As we understand it, the lack of such legislation right now is a major reason why Conrail is unwilling to come on board with this Northern Virginia Commuter Rail Service. And we think that, given the fact that trains are safer than automobiles, the number of lives and injuries that are being sustained as a result of no commuter trains to northern Virginia is very significant. And so we hope, that this can be addressed very soon if not on this bill.

The other question that I wanted to raise on the issue of secondary picketing is whether there is an intermediate position that can be achieved between an outright ban on secondary picketing and the present situation, where Eastern Airlines has a problem, and Amtrak does not know if they are operating the next day. Maybe it is possible to build a wall on secondary picketing between the railroads and the airlines, so that at least Amtrak and its passengers do not have to worry when there is an airline labor problem. That might be an intermediate position that could gain more support.

Finally, there were two proposals which were made by Mr. Lindsey which I want to raise serious questions about. First of all, we would be unalterably opposed to eliminating Amtrak's share of funding on Section 403(b). As one state railroad official recently said to me, "The first thing they want to know when I go to the state capital is how much will this project generate in terms of federal funds." This is why we have unbalanced spending at the state level: federal funding is virtually nonexistent for rail projects and, thanks to the mode-specific trust funds, relatively easy to get for highways and airports. So as long as there is essentially no federal funding for state rail projects, we would regard eliminating the Amtrak share, which, in effect, is the federal share, for section

403(b) trains as a bad idea whether you do it in a five-year period or overnight.

We think that there needs to be some better semblance of balance among matching programs for states at the federal level so that state decision-makers are not constantly buying into highway and airport programs simply because the federal government has got highway and airport money burning a hole in its pocket and nothing for rail. We think that is a lousy way to make decisions and there are many situations where, simply because of the distortion in federal funding, investments are being made in highways and aviation where rail could do the job better.

The other point that Mr. Lindsey raised was with regard to Amtrak's cross-subsidization of commuter authorities. As you know, the freight cross-subsidy was eliminated on the Northeast Corridor a few years ago, but the commuter cross-subsidy remains. Now, I would have to admit to you that there are probably a lot of our members outside the Northeast Corridor that would endorse ending this cross-subsidy. But, again, from the point of view of public policy, I have to raise a question about it.

Even with the cross-subsidy in existence, SEPTA is in the process of introducing a 21.6 percent fare increase on commuter rail, and New Jersey Transit, because of a budget problem, has proposed to introduce a 15 percent fare increase on May 1st and some massive service cuts on July 1st, which would be NJT's first-ever service cuts that were introduced specifically because of a budgetary problem and not because of low ridership.

Now, the question that has to be raised, this has to be put in the context of eight years of Reagan Administration savaging of the federal mass transit budget, which also has an impact on these transit agencies. We learn more and more every day about the environmental problems associated with auto commuting, and the need for every possible incentive to get people out of their automobiles. And I am not sure that further pressure to raise commuter rail fares is good policy.

Now, it is not very tidy, perhaps, to have commuter-rail support concealed in an Amtrak subsidy and it maybe makes the interstate aspect, Amtrak's fundamental mission, more difficult to defend because, in Mr. Lindsey's words, it increases the apparent subsidy for intercity service. But I think we're left with the overall context, which, even the new administration, in my observation, has defended what I consider to be the ridiculously low mass transit budget that the Reagan Administration sent forward.

And I am reluctant to endorse a proposal that has the effect of coming at the commuter agencies from another direction at the same time that what I regard as an irresponsible federal budget proposal is being put forth with regard to mass transit.

I think I have taken up enough of your time and I thank you very much for the opportunity to testify.

[The statement follows:]

Statement of
Ross Capon
Executive Director
National Association of Railroad Passengers

Before the Subcommittee on Surface Transportation
The Honorable J. James Exon, Chairman

Committee on Commerce, Science and Transportation

United States Senate

Amtrak Reauthorization Fiscal Years 1989-1992

April 6, 1989

Thank you for this opportunity to present the views of our non-profit, consumer-oriented organization, which for 22 years has been promoting "balanced transportation."

I. AMTRAK'S RECORD MERITS SUPPORT FOR FUNDING LEVELS IN S. 462

We support S. 462, authorizing \$630 mill., \$656 mill., \$684 mill., and \$712 mill., respectively, for Amtrak in Fiscal Years 1989-1992. Amtrak is a good bargain for the nation. As Amtrak grows, so does its positive contribution to several problems that afflict U. S. transportation: road and airway congestion; energy efficiency; negative environmental impacts; safety; and mobility for many smaller communities.

Since I last appeared before this committee Mar. 17, 1988, Amtrak posted yet another banner year. Fiscal Year 1988 was the 6th consecutive year in which travel on Amtrak increased (to 5.7 billion passenger-miles) and the 7th consecutive year in which Amtrak's revenue-to-cost ratio improved.

Travel increases on Amtrak are in spite of sharp fare increases. As Amtrak Pres. W. Graham Claytor Jr. noted in a letter published in the Mar. 9 Journal of Commerce, since 1981, Amtrak fares rose an average 48%--while air fares fell 6%, gasoline prices declined 30%.

Amtrak sets fares to maximize revenue and is developing a computerized "yield management" system to further refine the "art" of setting fares. NARP strongly disagrees with those who

think Amtrak should respond to generally high load factors with "bull-in-a-china-shop" massive across-the-board fare increases.

The need for increased capital investment grows with each year. We support Amtrak's proposal that \$50 million of Amtrak's FY 1990 funding be reserved to acquire Viewliner cars, which would replace the oldest cars Amtrak currently operates. As I noted a year ago, then-Federal Railroad Administrator John H. Riley testified that the purchase of Superliners (the double-decker Western counterpart to Viewliners) "within the year reduced unit maintenance costs 50%."

II. WE SUPPORT THE PROPOSALS IN AMTRAK'S 1989 LEGISLATIVE REPORT

Of particular note is a proposal also supported by the Reagan Administration (and apparently the new administration as well): extending to Amtrak the benefits commuter railroads were given last year--unemployment insurance premiums based on each individual railroad's employment record. For Amtrak this would mean an \$8 million/year savings.

Also, we strongly favor allowing Amtrak to issue tax-exempt bonds to the public. Since airports have long benefitted from--and depended on--tax-exempt bonds, giving Amtrak the same privilege would remove one of many federal policies that are "anti-balanced transportation."

[Robert J. Aaronson, director of aviation of the Port Authority of New York and New Jersey: "It is inconceivable that a modern airport, which under the existing tax code includes such public service accommodations as terminals and their related retail stores, runways, hangars, loading facilities, cargo buildings, parking areas and maintenance bases, as well as appropriately sized inflight meal facilities, hotels and meeting facilities, could be provided on any adequate scale by taxable financing" (Aviation Week & Space Technology, Sep. 16, 1985).]

III. NEEDED: A BETTER BALANCE IN FEDERAL TRANSPORTATION SPENDING

We strongly support Amtrak's suggestion that the Highway Trust Fund eventually be used to fund Amtrak. Since Amtrak in many instances is even more relevant to airport congestion, ideally we would like to see a consolidated transportation trust fund that commingles all transportation user revenues. Such a fund should be used in part to fund Amtrak and to support state railroad projects.

Mode-specific highway and air trust funds simply insure that we invest heavily in already-dominant modes of transportation even where rail could do the job better. The nation as a whole and the traveling public in particular suffer as a result.

Federal transportation policy heavily influences state and local transportation spending. As one rail official told me, the

first question they ask in our state capitol is: "How much federal funding would this project generate?"

Lack of federal matching funds for railroad projects--in contrast with generous federal funding for highway and aviation projects--explains why states rarely give rail passenger investments the consideration they deserve. Imagine how much more airport congestion Amtrak could alleviate if state support of rail capital improvements was the rule (as it is becoming in California) rather than the exception!

o Not one Chicago-area Amtrak route offers air-competitive schedules, yet "a recent street survey conducted by the Chicago Sun-Times showed that 3 of 4 respondents would prefer using improved Amtrak midwest corridor trains to flying....27% [of O'Hare] flights serve destinations within 200 miles of Chicago. ...Fully 50%...goes to points within 400 miles of Chicago" (Illinois Association of Railroad Passengers news release, Dec., 1987).

o Amtrak's Boston-New York running times remain around four and one-half hours, yet Northeastern University Prof. James Molloy, who did a survey for Associated Industries of Massachusetts, says "a surprising number of manufacturing executives would use fast trains to New York as an alternative to air travel from Logan International Airport. 'I was surprised at the answers because they (executives) are used to aviation and going (to New York) by (air) shuttle.' [Molloy] said about 45% of the 123 firms surveyed indicated they would use trains if the trip could be made in 2:45" (The Journal of Commerce, Mar. 7, 1988).

While much potential for rail travel goes untapped, government at all levels collected \$57 billion for highways in 1987, including \$17 billion in non-user payments. Only \$1.2 billion of the latter figure was at the federal level, but federal matching-fund policies help explain the massive disparity between state involvement in railroad projects and in highways. Even where a state desperately wants improvements (i.e., Illinois re Chicago-Springfield-St. Louis track rehabilitation; Massachusetts re Boston-New York), lack of federal funding has meant a woefully inadequate state response. [Source of highway figures: Table HF-10, page 38, Highway Statistics 1987, Federal Highway Admin.]

IV. AMTRAK'S REVENUE-TO-COST RATIO; SERVICE QUALITY

We oppose legislation mandating Amtrak to attain a particular ratio. Amtrak's present management has a well-established policy of increasing that ratio; moreover, there is a built-in incentive for future managements to do likewise: Amtrak's desperate need for capital investment will not abate in the near future and maximizing the revenue-to-cost ratio also maximizes the share of Amtrak's federal funding appropriations that can be devoted to capital investment. Capital investment today, of course, lays the foundation for tomorrow's revenue-to-cost ratio improvements.

There is an intricate relationship between Amtrak's service quality and the revenue-to-cost ratio, since skimping on maintenance can improve that ratio short-term but exact an unacceptable toll in service quality over a slightly longer term.

Last year, we published a newsletter article, "Amtrak Struggles to Restore Fallen Service Quality," attached here as an appendix. Deferred maintenance of equipment caused perhaps the most severe problems discussed. The deferred maintenance stemmed largely from Fiscal Year 1986, when Amtrak learned the size of its budget during December (more than two months into the fiscal year) and cut both service and maintenance. As President Claytor said a year later, "I was nervous about [cutting maintenance] but we were stuck with no money, so we did it. It was a bad mistake that cost us more than we saved. Under no circumstances would I do that again. I'll cut the service before I'll do that."

In fairness to Claytor, bigger service cuts (the alternative to maintenance cuts) would have produced deafening howls of protest from us and many others and might have done even greater long-term damage to Amtrak's market-share than did the maintenance cuts.

It appears to us that Amtrak is continuing to work hard to restore service quality; two indicators: F40 diesels are now under 850,000 miles since last overhaul, as Amtrak promised; Amtrak has changed pest-control contractors. The real test for much of the system will come this summer.

National Association of Railroad Passengers News, Oct.-Nov., 1988

Amtrak Struggles to Restore Fallen Service Quality

Americans are rediscovering the rails. Amtrak passenger-miles, revenues, and cost-recovery are at record levels. 1988 ridership may surpass Amtrak's all-time high of 21.4 million, set in gasoline-scarce 1979; Amtrak's revenue-cost ratio in 1988 will beat the intended goal of 67%.

Countless people are still enjoying their rides. Mr. Donald Maushund of Michigan, in an Aug. 2 letter, called his recent Amtrak trip to Las Vegas "the nicest thing my wife and I have ever done."

But NARP Member Robert Bellinger of California said that, on his May-June trip to Chicago, he had "never heard so many people saying this was not only their first trip via Amtrak, but probably their last."

Train reliability is declining and there are problems on board many trains.

Why the Trouble?

Certainly, budget cuts have squeezed Amtrak's maintenance budget and prevented the acquisition of new rolling stock for fleet replacement and expansion. Some believe Amtrak's response to the budget cuts overemphasized quickly raising the revenue-cost ratio while equipment maintenance fell short. Speaking to the NARP Board in April, Amtrak Executive Vice Pres.—Marketing & Business Development William Norman emphasized the company's decision to make improving the revenue-cost ratio its top goal.

In addition, changes in the rail freight industry have encouraged many railroads to pay less attention to the on-time reliability of Amtrak trains.

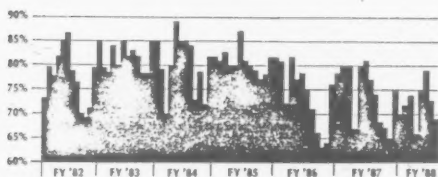
In any event, many observers have noted a growing gap between marketing promises and service reality. Clearly, this must be reversed.

Late Trains

Amtrak's on-time performance rose dramatically as new and rebuilt equipment was introduced in the early 1980s—from 57% in FY 1979 to 79% in FY 1982. For 3 years, punctuality remained good: 82%, 80%, and 81% of trains were on time in 1983-84-85, respectively. Then, trouble: 74% in 1986 and 1987. An even lower percentage is expected this year.

At the July meeting of the Amtrak Board, Chairman W. Graham Claytor Jr. said June's on-time performance was a poor 64%—down nearly 4 points from the previous June—and trains outside the Boston-Washington Northeast Corridor were only 54% on-time, which Claytor termed "sort of a disaster!"

AMTRAK SYSTEM TRAIN RELIABILITY
(% of Trains Operating On Time, By Month)



NOTE: Amtrak uses the federal fiscal year (FY): Oct. 1 through Sep. 30. Trains are considered "on time" if they arrive within 5 minutes of schedule for each 100 miles traveled—up to a maximum of 30 minutes late. Thus, a train traveling 300 miles is allowed 15 before it is "late"; a train traveling 1000 miles is "late" after 30.

Western long-distance trains had a particularly rough summer. The eastbound "Southwest Chief" from Los Angeles averaged 3 hours late into Chicago July 6-19. The southbound "Eagle" from Chicago, already scheduled into St. Louis and San Antonio around midnight, regularly arrived even later due to bad Chicago, Missouri & Western (CM&W) tracks. With the northward trip leaving San Antonio at 7:20 AM the next morning, on-board crews often got virtually no rest between trips.

Some reasons why trains run late in the summer:

- In the northern half of the U.S. (roughly speaking, north of Washington-St. Louis-San Francisco), reliability always suffers somewhat during the warmer months since track maintenance must be concentrated then.

- Extraordinarily hot weather can provoke temporarily-lowered speed limits for safety anywhere, as welded rail can expand beyond acceptable tolerance, causing heat-related alignment problems. Most railroads impose the restrictions at 90° F. At 95° F, Amtrak cuts its Northeast Corridor speed limits to 80 mph, from a top of 125 mph (37 days this summer vs. 24 last year).

- Most trains are most heavily used during the summer, so delays at stations (including double- and sometimes triple-stops due to longer trains) and from lower horsepower-to-weight ratios are also common.

Except for the extent of this summer's heat-related speed restrictions, the above 3 factors were not new in 1988. It was the addition of the following factors that made this year "special" in a way Amtrak and its friends would like to forget:

- Delays stemming from deteriorated track, especially Chicago-St. Louis and Milwaukee-St. Paul.

- "San Diegoan" trackwork disruptions at the height of the summer travel season. 1989 on-time performance should improve, thanks to night-time track work and adjusted schedules.

- Freight train interference. Freight railroads, under heavy pressure from government-subsidized truck competition and from costs government imposes on railroads but not their competitors, have continued to abandon track, concentrating traffic flows on fewer lines. August was the 19th consecutive month in which overall U.S. rail freight traffic rose. (However, it fell 3.3% on Santa Fe, where "Southwest Chief" reliability was particularly bad.)

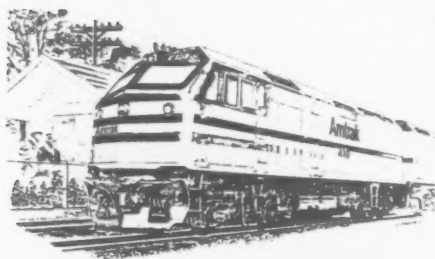
One problem has no solution: economic efficiency requires most freights to run without a caboose. Caboose-less freights, however, are vulnerable to longer en-route delays than freights with cabooses, since crew walking along the stopped train to find a problem car start from one end rather than both ends of the train. Thus, freights using Amtrak's Northeast Corridor between 7 AM and 10 PM are required to carry cabooses.

- Signal failures, especially Boston-Albany and in Michigan, where new signal installations have been nightmares for Conrail. (Fortunately, Amtrak learned of this in time to ax plans to install the same system between Springfield, MA, and New Haven, CT.)

- Malfunctioning locomotives and cars. A locomotive breakdown often means no electricity on the train (except for emergency lights) and no air conditioning. For many passengers who could otherwise take delays in stride, a long wait on a hot train is the last straw.

What are the Solutions?

- **Fix the tracks.** This will be a state responsibility so long as the federal government ignores the needs. Fortunately, the threat of rerouted Chicago-St. Louis and Chicago-St. Paul Amtrak services (May News) raised the awareness of Illinois and Wisconsin state officials. Illinois is providing \$14 mill. to upgrade CM&W tracks and has formed a task force to study



Next year, Amtrak will receive 2 new General Motors F69 diesel locomotives, intended to be prototypes (except as to body styling) for the generation of diesels that will eventually replace Amtrak's F40 fleet. One feature passengers may appreciate: the inverter supplying power to the rear 2 axles can provide electric power for the train if the regular "head end power" inverter fails.

intercity rail passenger needs statewide (NARP Reg. 7 Dir. Ken Bird of Woodridge is a member).

Sen. Bob Kasten's (R-WI) work produced federal money to augment Soo Line's track repair program. The Senate approved \$8 mill.—not \$10 mill. as we reported (July News, p. 4)—and House-Senate appropriations conferees reduced this to \$6 mill. Actual Milwaukee-St. Paul running-times should be reduced each succeeding winter, but summer interference from track work will continue at different locations for several years.

In the long run, of course, we need a change in federal policy toward trucks and trains (see "Truck Subsidies Big and Growing," Apr. '86 News).

● **Fix the trains.** Amtrak learned the size of its FY '86 federal grant more than 2 months into the fiscal year. To absorb those cuts, emergency service cuts took effect Jan. 12, 1986, to the dismay of NARP and others, and maintenance was also cut. Amtrak Pres. Claytor said at the time the service cuts were "too little, too late."

Asked in a Senate hearing Mar. 6, 1987, how he might cut costs, Claytor said he would not cut maintenance again. Referring to his FY '86 experience, he said: "I was nervous about [cutting maintenance] but we were stuck with no money, so we did it. It was a bad mistake that cost us more than we saved. Under no circumstances would I do that again. I'll cut the service before I'll do that."

In FY '86, a key measure of maintenance, miles between heavy overhauls, was allowed to rise above one million miles for some F40 locomotives (Amtrak's standard diesels). Amtrak later decided to cut it back to the manufacturer-approved 850,000-mile level, but the large number of units, and the fact that they are in tight supply, meant many F40s still had over one million post-overhaul miles as late as last December.

In a 3-hour Sep. 8 meeting involving 4 top Amtrak executives and the NARP leadership, Amtrak indicated all F40s will be under 850,000 miles by year's end and under 750,000 eventually. Attending the meeting were Amtrak's Graham Claytor and William Norman, Exec. Vice Pres. & Chief Operating Officer Dennis Sullivan, and Vice Pres.-Transportation Robert Vander-Clute; NARP Pres. John Martin, Vice Pres. Eugene Skorowski, Exec. Dir. Ross Capon, and Asst. Dir. Barry Williams.

Similarly, many cars have gone 8 years without a major overhaul and Amtrak expects to get that down to 4 by 1990. Amtrak is setting up modern assembly lines to meet its annual goals of overhauling 85 Superliners and 100 Heritage cars at Beech Grove and 150 Amfleet cars at Bear, DE. The Amfleet line has been operating since November, 1987. Amtrak believes this

has already shown positive results.

Amtrak's Brighton Park, IL, Shop, once used for turbotrain maintenance, reopened June 1 handling 120-day maintenance for Chicago-based cars. This leaves more room in Chicago for daily running inspections and repairs.

Getting and keeping the entire car fleet on firm 120-day and overhaul schedules should reduce future "down time" and reduce the risky practice of "stealing" cars scheduled for preventive maintenance and pressing them back into service.

To speed up work, parts inventory procedures at the shops are being simplified and paperwork reduced.

Amtrak's Dennis Sullivan has told NARP that Amtrak's older locomotives must be replaced "in the next 5 or 6 years," and that orders should be placed "in the next 3 or 4 years."

Some relief will come sooner. 2 diesels (F69s) and 7 electrics (AEM7s) are being built for Amtrak. Amtrak was the successful bidder for 8 used diesels. Also, Amtrak began the year with 12 diesels sidelined for "wreck repairs"; that is now down to 5 and should drop to 0 by the end of December.

● **Correct toilet problems.** Amtrak is redesigning the toilets on Amfleet I cars using all-stainless steel and eliminating the plastic shroud which retains unpleasant odors. In addition, Amtrak is increasing the frequency with which these cars' toilet tanks are pumped out. This is a costly, time-consuming process required only on this type of equipment, but needs to be performed regularly.

As of Sep. 3, Amtrak began pumping in San Diego the cars that spend the night there rather than depending on having them pumped when they are turned in Los Angeles—something that didn't always happen when trains ran late.

Similarly, in early September Amtrak rearranged forces at Albany to insure that the 2 Canadian trains are pumped there in both directions. (The trains are also pumped overnight in Montreal and Toronto but not at New York's Grand Central Terminal.) Finally, problems—including road access for toilet-servicing trucks—which apparently prevented reliable pumping at Springfield, MA, have been solved.

In the future, any Amfleet I toilet problems should be confined almost exclusively to peak-period situations where, due to late trains, there's a crowd jamming the station waiting to leave, and Amtrak makes a "judgment call" that the equipment can make one more trip before pumping rather than force the crowd to wait (in some cases as much as 90 minutes) while the train is pumped.

Superliner cars present a different problem: a prohibited item such as a paper towel deposited in one Superliner toilet can knock out the car's entire toilet system. It's usually not difficult to remove the obstruction, but the procedure isn't especially pleasurable. When toilets become clogged, crews often respond by locking the restrooms. On-board personnel are being trained to clear obstructions, and Amtrak management believes that job will get done. Superliner toilets are being modified during overhauls to further improve their operation.

● **Fill the water tanks.** Amtrak is reassessing the intervals between watering points in light of today's heavier passenger loads. Amtrak has discovered, and is working on, a problem involving pumps that transfer water between two tanks in the Amfleet II cars.

● **Fix electrical connections.** Trains' on-board electric power is distributed from car to car by means of 480-volt cables which plug into receptacles at the ends of each car. Amtrak is installing receptacle locks to hold the power cables more firmly in place and prevent them from accidentally disconnecting en route. The Amtrak Board has approved funding to install locks on the first 228 cars.

● **Eliminate Rodents.** This year's apparent increase in on-board rodents—the subject of a July 19 NARP letter to Amtrak—evidently resulted from Amtrak's switching to a less dangerous and somewhat less effective fumigant chemical without adequately checking to see that the right amount of the chemical was used, and without extending the length of time the cars are closed to permit the fumigant to work. Amtrak says this has been corrected, in consultation with its pest-control contractor, Orkin. Amtrak also has begun (!) cleaning up facilities such as commissaries, shops, and yards, in order to eliminate nesting areas; this includes removal of weeds and vegetation.

● **Get After the Railroads.** Amtrak must devote more effort than in the past to "riding herd" on the railroads to see that they give Amtrak trains the right priority and that dispatchers make good decisions.

High Marks for On-Board Crews

Happily, one major aspect of passenger service is not generating many complaints this summer: on-board service (OBS) employees. In most of the complaint letters we have received, passengers had good things to say about OBS personnel.

After a 6900-mile Amtrak trip in July, NARP Member James Bradley wrote us that "coach attendant service . . . averaged positive. Sleeping car porter was courteous and helpful. . . ." Ms. Betty Wilkerson wrote: ". . . the very good things we encountered [on Amtrak included] excellent food, courteous employees, and especially a train attendant, David Lilly. Mr. Lilly was kind and helpful even under the stressful conditions taking place. He never once answered rude and belligerent passengers in a sharp or negative way. In retrospect, he was the only thing . . . that kept my husband and myself from becoming nasty."

Many of the remaining employee problems should disappear if Amtrak can solve the above problems that unnecessarily add to job stress.

Needed: Capital Funding, Quality Control

In the long run, none of the above actions will substitute for the capital funding that Amtrak continues to need and continues to live largely without. But—if all the solutions Amtrak is working on are executed successfully and consistently—Amtrak next summer could turn out a product we'd all be proud to recommend to our friends.

We plan to meet with Amtrak next March to get an update on progress in preparing for summer 1989, after which we will report further in NARP News.

(Pinpointing "what really needs to be done" is not easy. We welcome comments from Amtrak passengers and employees who feel this story overlooks important points. We prefer signed letters but of course would respect any requests that writers' identities be kept confidential.) ■

Senator EXON. Thank you very much. I just have a couple of questions, and then I will move on. There will be some other questions for the record that I would like both of you to respond to, if you might.

Mr. Kennedy, in your testimony you suggest that with FELA, the railroads, including Amtrak, would escape accountability. And much of the financial responsibility for hearing losses and occupational disease stemming from exposure to asbestos or other things and other toxic substances.

Should I infer from this statement that workers in other industries do not recover damages for these types of injuries? They do, do they not?

Mr. KENNEDY. Well, workers in other industries, Mr. Chairman, receive workers' compensation. But, since workers' compensation is not a fault-based system, it is not true accountability for whatever Amtrak has done wrong, whatever it has done wrong through its fault, for the employees who are injured, thereby, as a result of a fault.

So that is what I am referring to there. So I guess the answer to your question is yes.

Senator EXON. Is it true that some of the people, including Amtrak and the Administration, are saying we should start suggesting FELA reform; are maintaining that the lawyers' fees are one of the main reasons for driving up the costs on the FELA, and you do not have that under workmen's compensation.

Is that a key?

Mr. KENNEDY. I do not think so, Mr. Chairman. I think they think it is a key; they testify so. We have looked into this and we have discovered that, the records are that over 85 percent of FELA cases, they are settled, and a lawyer is not even involved in it. In only 15 percent of the cases is there a lawyer involved in the cases.

Senator EXON. In other words, what you are saying is that 85 percent of the cases are settled without lawyers being involved. An offer is made and it is accepted by the one who is injured?

Mr. KENNEDY. Yes, sir.

Senator EXON. And it is only 15 percent of the cases where lawyers' fees are established at 25 percent of the total settlement fee?

Mr. KENNEDY. Yes. In fact, the organizations that are affiliates of the RLEA have put in requirements that in order for FELA lawyers, to get on their preferred list, recommended list they must comply with.

They do not have to use these people, these are people who they have researched and found are ethically, morally, professionally able to represent these people in the best possible way, on these lists, but in order to get on these lists, one has to agree that the lawyers' fee will not exceed 25 percent. They can be no higher than 25 percent.

The awards are based on the injury and not on the fees, based on the injuries.

Senator EXON. They are based on the award for the injury, right?

Mr. KENNEDY. Yes.

Senator EXON. Mr. Claytor responded to a question I asked him, I think you were in the audience and probably heard him. I asked him if any of the employees of Amtrak were enthusiastic about the

three-year trial plan that he has suggested. And I assume there are none of the employees that you know of that are in support of this trial period?

Mr. KENNEDY. If there are any I have not heard from any of them. I have heard from many of them who suggest that we should get in here and testify against that three-year trial period, which they view as a three-year experimentation with their lives and their limbs.

Senator EXON. Let me ask you one question if I might, Mr. Capon. In your testimony you argue that the mode-specific highway and air trust fund simply insure heavy investment in the already dominate modes of transportation, even when rail could do the job better.

Could you elaborate some on your position on this? And is this something that your organization has done some study on?

Mr. CAPON. Yes. I would be pleased to.

As we see it, there are in the United States right now a couple of states, California probably being the premier state where the problem of congestion on the highways has gotten so dramatically bad that it has forced the state, including the Governor, to pay attention to the fact that Amtrak was the cheapest way to expand transport capacity.

But it is like so many things in our society, it is only when it gets to the crisis level that you are forced, against federal incentives really, to start addressing the problem in a significant way.

As we understand the numbers, the aviation system was set up with a lot of benefits which the rail passenger system did not have; that the amount of money at the Federal level that was invested in airports and aviation before the trust fund was established in 1971 was \$15.8 billion.

And the Congressional Budget Office released a report on the status of the Aviation Trust Fund in December, which stated that since the Trust Fund was established, \$17 billion more that was spent on aviation than was collected from aviation users.

At the same time that this was happening in terms of Federal aid to aviation, the Federal Government was collecting a ticket tax that was established in the middle of World War II in all inter-city transportation.

In the case of railroads, the passengers paid that tax and it went straight into the Treasury and was for general funds. In other words, there is \$2 billion or \$3 billion, and those were 1940-1950 dollars, in current dollars, probably much more, that was paid by railroad passengers before Amtrak was created, that simply went into the general treasury.

So we see this double standard.

Also, with respect to the Highway Trust Fund, at the Federal level today, the highway spending is roughly deficit-neutral, I guess is the OMB term.

But the important thing, as I alluded to earlier, is the availability of lots of federal matching funds for highways. And the lack of availability for that in the case of railroads and transit, I think, is the major reason why in 1987, the most recent year for which the Federal Highway Administration has released figures, a total of about \$17 billion in non-user highway receipts were collected.

So that we have that system, and of course, it snowballs, because the more you invest in an auto-dependent system, the more the pressure builds to build more highways.

Now we are beginning to see growing public support for change. Again, California is in the forefront. In Southern California, there have been some polls taken recently which show strong support for some massive new investment in rail transit.

And people are looking eagerly forward to the opening of the Long Beach-Los Angeles light rail system next year, which is really a recreation of one of the old Pacific Electric lines that was ripped up within the past 30 years, and of course the Los Angeles subway.

And I think that we are going to see more of that happen in other metropolitan areas. In fact, the San Diego trolley, which opened in 1981, is one of the most successful new transportation projects in the country, has consistently recovered over 85 percent of operating costs from the farebox, and we think is a model that should be followed in many other metropolitan areas.

Is that responsive to your question?

Senator EXON. Yes. Thank you very much.

I have no further questions. I will have some for the record.

Senator Burns.

Do you have some questions?

Senator BURNS. I sure do.

Senator EXON. I would say, we are trying to keep on track. We want to recognize you and then the Senator from Washington who has arrived. And we have another panel at 3:30, but please, proceed.

Senator BURNS. They will be very, very short. We are having terrible problems in the State of Montana with our workmen's comp fund. In fact, we are way in debt. And I want to ask you right now about FELA. If you would enlighten me, please, on the settlements for injuries in this fund are there a lump-sum settlements in that? Or do you know?

Mr. KENNEDY. I believe the answer is that there are some lump-sum settlements, and other settlements are not on a lump-sum basis, but on a periodic basis.

Senator BURNS. Mr. Capon was relaying the story of a fellow that was having a hard time deciding between Pan Am and riding the train for only \$20 less. If time was not of the essence, I think I would take the train, because you do not see a lot on Pan Am. You know, you cannot read any brands on the cattle and you cannot see how the creeks are running and how the country looks. And that is a great pleasure of riding the train.

But I am also concerned, every time that I am around Amtrak, about a sort of lackadaisical attitude of the employees. Whenever you start trying to sell a service, you know there is no motivator in the world like fear, fear is still a great motivator. If I was in fear of losing my job, I think, or working in conditions that I did not like to work in, I think I would probably work awfully hard to improve those conditions.

But, you can put the best advertising program in place, try to fill the trains up, and try to become self-sufficient. And then you run into some employees that, because of their not having fear of ever losing their jobs they are not the best kind of employees.

And I want to know how to get around that.

Mr. KENNEDY. Well, first of all, I have not heard so much of that lately. In the years from 1958 until 1971, when the railroad industry purposely downgraded its service, I heard a lot of complaints about passenger service in this country.

And along with Ross Capon and the organization he represents, the railroad labor unions believed in the concept, like Amtrak. We are the ones who came to the Hill and sold it to you folks, your predecessors. We believe very strongly in Amtrak. Our employees believe in it. It is where they work, and they are very proud of Amtrak. And they are proud of the kind of management that Graham Claytor has brought to Amtrak.

I am surprised by your statement. It is not something I have heard, as I said, much of.

I would like to comment also on what you had said initially about the Montana workers' compensation thing. The fact that that has problems, the fact that many state workers' compensation laws have significant problems, and they are all different, one from the other, is one of the main reasons why we do not want to see our people under such disjointed systems.

We think we have a system in FELA that works, and works to recompense the employees for the damages due to Amtrak's negligence. And it also works to provide safety for the communities through which the trains run, for the people who are riding on the trains, and for the railroad workers.

But, we think there is a workforce on Amtrak which is very proud of their jobs and wants to keep their jobs, and knows that one of the ways to keep their jobs is to give good service to the public.

And if that is not being done, it is our members fault, it is also the fault of management in a given situation. I do not think that is generally the rule with Amtrak today. I think, in general, you are getting good service, the employees are happy with their work, and realize they have got to keep the public happy.

Senator BURNS. Well, those were just some of the concerns I had. And in the essence of time, Mr. Chairman, those are all the questions I have. And I would welcome our friend from the State of Washington.

Senator EXON. Thank you, Senator Burns.

Senator GORTON.

Senator GORTON. Thank you, Mr. Chairman. I noted something in the memo presented to members on this side, simply summarizing what this hearing is going to be about, and I am really asking the wrong panel, and I apologize for this, but I think both of you probably will know the answer to it: that Amtrak's revenue-to-cost ratio during the 1980s has improved from 48 percent to 69 percent.

Can either of you, maybe you are the better of the two, Mr. Capon, tell me whether or not there are any of the routes on Amtrak at the present time, presumably from here to New York, which reach 100 percent on that, in which the fare revenues cover the entire cost of operation? What is the range?

Mr. CAPON. Well, I guess Amtrak accounting has a large variety of ways of keeping track. I think long-term avoidable costs is the closest thing Amtrak has to a true private enterprise definition of

costs, that is, if they are above 100 percent, you are making a profit.

My understanding is that, within the Northeast corridor, the corridor operation as a whole requires a subsidy of over \$200 million a year.

However, the Metroliners, I believe, are said to be covering well over 100 percent of what Amtrak calls long-term avoidable costs. And, in fact, over 200 percent of what Amtrak calls short-term avoidable costs, which are the costs that disappear within a year if you eliminate the service.

Now if you get outside the Northeast corridor, the Autotrain, I believe, is covering more than 100 percent of its long-term avoidable costs, but no other route.

However, if you responded to those facts by eliminating everything other than the Northeast corridor and Autotrain, that would no longer be true.

The incremental cost, for example, of sticking the Autotrain in an existing reservation system is obviously a lot smaller than the cost that you would have if you had a reservation system standing alone just to serve Autotrain, which is of course what the old Autotrain Corporation had.

So I believe——

Senator GORTON. But with that caveat, the range among various of Amtrak's routes is probably very extreme, from well over 100 percent to somewhere down around 20 percent, I would suppose.

Mr. CAPON. I do not believe there is anything anywhere near 20 percent. And I believe that all of the routes have been trending upwards along with the system-wide average. Amtrak, I am sure, could give you this for the record, but I believe the preponderance, for example, of the long-distance routes, in terms of long-term avoidable costs, are all above 60 percent, and some of them may be above 80 percent.

Senator GORTON. Do you see at any time in the future, which you can foresee, the system itself as a whole operating on a 100 percent of long-term avoidable costs?

Mr. CAPON. In the absence of major changes in the other modes, I am very doubtful that Amtrak would reach 100 percent in my lifetime.

Senator GORTON. Other modes, air and auto?

Mr. CAPON. In other words, you know, the price of gasoline in this country is much lower than it is in most other industrial countries, if that changed, that would have an impact on Amtrak's ability to charge fares.

The other thing which is going on for a large number of reasons, not simply congestion at airports, is an increase in the airline fares, Amtrak fares are sensitive to competition from the airlines. As airline fares trend upwards, that increases the level of fare that Amtrak can charge. It improves the yields, both from the airlines and on Amtrak.

So that would be another factor that could give a boost——

Senator GORTON. But not one that consumers are delighted with?

Mr. CAPON. That is probably true.

Senator GORTON. I thank you. And I thank you, Mr. Chairman.

Mr. CAPON. Although, could I add one point, in terms of corridors? A survey was done within the past two years for the Associated Industries of Massachusetts, which is their state chamber of commerce, in which the Northeastern University professor who did the survey said that he was surprised at the high percentage of manufacturing executives who said they would use the train from Boston to New York if it was at less than a 3 hour running time.

Senator GORTON. Thank you.

Senator EXON. Thank you very much.

Are there any further questions?

[No response.]

Senator EXON. If not, Mr. Kennedy, Mr. Capon, thank you very much for being here, and we appreciate your testimony. And you are excused.

[Whereupon, at 3:30 p.m., the hearing was adjourned.]

